

# Central and Eastern Europe: Public services at the challenge of European integration

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This communication builds on the Report prepared for the GUE / NGL Group of the European Parliament at the end of 2018 on "the effects of the liberalization of public services - services of general interest"<sup>1</sup>, to which the authors participated. This report was focused on three particularly important sectors of public network services (rail transport, electricity and postal services) at EU level and in four Member states (France, Germany, Spain, Slovakia).

After a general presentation, the communication develops the specific situation of Slovakia, as a case study, before trying to explore ways forward for the 2020s.

## Liberalisation of Publics services – Services of general interest in the European Union and their effects

Public services - services of general interest(SGIs), are essential for all European inhabitants and citizens, as well as for economic, social and territorial cohesion. On average, they represent 30% of employment and 25% of GDP<sup>2</sup>.

In all European countries, SGIs had been subject of particular objectives and rules, complementary to the common competition and market rules, to ensure universal access to these services in all countries, to ensure their provision through social or territorial forms of solidarity, to build up the needed medium- and long-term infrastructures. So, SGIs have been subject to the definition of public service tasks – national terms or concepts being more or less similar.

The process of Europeanisation of public services - services of general interestcover the last 70 years of European integration.

There were in the 1960s and 1970s many debates, ideas and proposals; opportunities were missed before the 1980s to build an original European reference framework of services of general interest.

During the 1980s and 1990s, European debates focused on the definition of Europeanisation strategies that would be adapted to the specific challenges of SGIs and the 1986 Single Act can be considered as the initiator of liberalisation process.

The European strategy of Europeanisation was then based on steps of progressive elimination of obstacles to trade in the EU and the rejection of any form of discrimination. The aim was to integrate each sector in the construction of a "common market", and then of

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<sup>1</sup>[www.actionpublique/eu](http://www.actionpublique/eu)

<sup>2</sup>*Mapping of the Public Services in the European Union and in the 27 Member States*, CEEP for the European Commission, 2008-2010.

an “internal market”, which soon led to putting the objective of “internal markets” in each sector.

How ought we to measure the "effects of liberalisation"? On this issue, we were confronted with the impossibility of isolating liberalisation policies from the other factors that have contributed to the changes of the last half-century - technological changes, economic aspects, financialization rationales, users' expectations and needs, ideological and political background, etc.

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Assuming that it is possible to identify the positive and negative effects of liberalisation policies, the assessment criteria will depend on the issues involved in the previous situation and the disparity in the aspirations of the various stakeholders.

More generally, the necessary data are not always available, partial or comparable; as sectors are increasingly organised into segmented markets, skills and information are distributed between several public authorities and not all have the same advertising and data availability policy.

Therefore, rather than making peremptory judgments, the research tries to identify general structuring trends:

- where competition is introduced, it tends to be oligopolistic (often, we have the defaults of monopoly, without its advantages);
- competition is mainly developing in marginal markets or in some market segments ("skimming");
- oligopolisation tends to become European;
- the legal statutes of the incumbent operators, which were almost everywhere under public law, are governed by common law;
- they tend to diversify their activities and fields of action to compensate for their losses in the national market share, accentuating trends that are often already present;
- in the field of social relations, the trend is towards the “precariousness” of jobs, rather than a generalization of “social dumping”;
- in a context of increasing competition, operators tend to develop social and territorial segmentations, which challenge previous principles of equal treatment or universality; financial returns, which may hinder long-term sustainability; and increasing outsourcing with negative effects on society.

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It was not until the effects of the liberalisation policies launched at the end of the 1980s that services of general interest were taken into account, first, as “common values” and contributions to “social and territorial cohesion” (Amsterdam Treaty of 1997). Then, their access as “fundamental rights” was consecrated by the Charter of Fundamental Rights proclaimed in 2000 and incorporated into the treaties in 2009. The Lisbon treaty provided

for the possibility of adopting secondary legislation on the legal basis of Article 14<sup>3</sup> - a procedure not yet implemented 10 years later - and an annexed protocol<sup>4</sup> identifies a set of shared values. Recently, the reference to “access to essential services” was included in the Pillar of Social Rights proclaimed in Göteborg on 17 November 2017.

The result is now a "European *acquis*" that can be summarised as follows:

1. The Member States (national, regional and local authorities) have the general competence to define, ‘provide, commission and organise’ SGI, as well as funding SGEI.
2. The European institutions have the same responsibility for European services which prove necessary in order to achieve the EU’s objectives.
3. For non-economic services, the rules of the internal market and the rules of competition do not apply; they merely come under the sole general principles of the EU (transparency, non-discrimination, equal treatment, proportionality).
4. For services of general economic interest, the public authorities must clearly define their ‘special task’ (principle of transparency).
5. On this basis, they can define the means best adapted to effectively achieving the ‘special task’(proportionality principle), including, should it prove necessary and proportionate, aid and subsidies and exclusive or special rights.
6. The Member States are free to choose the styles of management: internal, ‘in house’, delegated.
7. These definitions must clearly establish the standards of ‘quality, security and affordability, equal treatment and the promotion of universal access and of user rights’ (see below, “shared values”).
8. The rules of competition and the rules of the internal market only apply if they do not stand in the way, legally or factually, formally or in effect, of their specific mission being achieved. The development of trade must not be affected to such an extent as would be contrary to the interests of the EU.
9. The Member States are free to choose the type of company property (principle of neutrality).
10. In all cases, misuse can occur due to ‘manifest error’ that the Commission can raise, under the control of the CJEU.

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<sup>3</sup> Article 14 of the treaty on the functioning of the European Union: “Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.”

<sup>4</sup> Protocol 26 annexed to the treaties on the European Union (TEU) and on the functioning of the European Union (TFEU).

The effects of the Europeanisation of the three sectors in the contrasting European countries we have chosen, in particular, the “liberalisations” decided by the Community institutions, are particularly difficult to dissect and analyse.

The changes that have taken place in these sectors over the past 70 years combine multifaceted transformations – technical and technological changes, evolving economic approaches, adapted user needs and expectations, social relations and environmental interactions – each with its own logic and dynamics, which can hardly be unravelled and individualised.

However, we try to disentangle from this maelstrom some general trends, to approach the effects of the liberalisation process in three areas: social, economic and financial and societal.

### ***Economic and financial effects***

Today, in each of the four Member States, the situation of the three sectors is very different from what it was at the end of the 1980s, when there were national or regional and public, mixed or private monopolies.

The general trend towards the opening of markets, the introduction of forms of competition, the Europeanisation of strategies and initiatives of operators is at work. But nowhere has this trend led to complete deregulation or savage forms of “deregulation”.

Everywhere there are new rules, just as numerous and binding if not more so than before, national regulatory authorities – and increasingly coordinated at European level, to ensure, frame and control the conditions of competition, to define, develop or guarantee public service or universal service tasks or objectives and to uphold the principle of non-discrimination, among others.

In each sector, there are new operators, sometimes several hundred or tens (for instance, in the railways sector in Germany or in the postal sector in France and Spain), but barriers to entry prevent real “pure and perfect markets”. The tendency is rather to the oligopolisation of markets, with 3 or 4 dominant and structural operators (often the old historical operators), and tendencies for the most important ones to leave their national territory of origin and to develop at European level.

In fact, how should we measure competition? By taking into account the number of operators on the market or the number of authorised operators? But this means putting on the same level a multinational and a small, local marketer. By the number of users who change their operator? Yet, remaining in contract with the same operator can come not only as a consequence of user satisfaction, but also of the barriers that incumbent operator puts at the entry of competitors. In fact, there is no single and simple indicator that provides a true measure of competition, and national reports rely on a variety of available data.

Everywhere, national historic public operators have seen their legal status changed to become “limited companies”, ‘companies like the others’ – the largest of them diversifying their activities and intervention spaces to compensate for their loss of market share in their country of origin or to ensure their growth. But these changes in legal status – and often in this context of the aims and objectives of the companies – have always been decided by the national public authorities, without any binding obligation coming from the European institutions.

The tendency towards oligopolisation tends to become European, as we find the same groups of services or even multi-services, seeking to deploy strategies for the production of value at the level of the European Union.

Competition is instead developing on geographical, technological or social 'niches', which make it possible to 'skim' the most profitable sub-markets, at the risk of unbalancing the universality of services and the financing of the PSO/USO.

More generally, it is necessary to consider the field to be opened up to competition. Since the 1980s, the European approach has consisted of defining "common rules" for each of the "internal markets", taking into account the specificities of each activity, but to the point of giving priority to the introduction of competition within each sub-sector. The most significant example is that of transport, where the introduction of competition within each mode of transport has been promoted, the effects of which in rail are essentially limited to providing incentives for operators' efficiency, rather than taking into account intermodal competition between rail and road, with very unequal conditions, particularly for freight. Similarly, in the energy sector, European rules first concerned the internal electricity and gas markets, then energy efficiency and the development of renewable energies – elements that are currently insufficiently linked in the "Energy Union". In addition, most major operators have developed value generation strategies that go beyond the narrow scope of sectors or sub-sectors.

### ***Social effects***

In the area of social relations, employment and working conditions of employees, the trend is not towards widespread social dumping or massive reductions in the number of jobs in the sectors concerned, but rather to put into question previous employment and/or 'status' conditions and to the development of forms of 'job precariousness' (temporary employment, mini-jobs, self-employed work, reduced wages and/or internal training, more frequent professional conversion), sometimes in conditions of increased profitability of companies.

For example, part-time work is developing in the public postal sector in France and Germany, at the same time as it remains far from being as developed as in the private sector. However, the public sector somehow 'internalises' such social situations when it contracts or subcontracts with the private sector concerned.

The transformation of the legal status of public operators is accompanied by the gradual transition from public law employment status to private employment status, including lower pay levels, but also a level of training that might not always be as demanding. More generally, the private sector has become an increasingly important supplier to the public sector, even though some outsourcing practices have been developing for several decades and are not specifically linked to the liberalisation process (see in particular the outsourcing of maintenance works in the French nuclear power sector).

The larger the share of labour in the economy of a sector (as in the area of postal sector distribution), the more the productivity gains risk to encroach on labour, sometimes favoured by new technologies (for example, mail-sorting technologies that replace manual sorting).

At the same time, new technologies or the creation of innovative services can foster job creation.

Thus, the German report mentions a higher level of employment in the public and private sector of renewable energies, whereas the weight of these energies in the production of energy is lower; this is because the sector is supported by significant public policies and funding. In the future, an important development of energy 'prosumers' would also have a significant impact on the labour market.

The development of the railway transport due to environmental considerations could also lead to increased employment, especially in the public sector, which is dominant in this field (for example, Deutsche Bahn has created more than 20,000 jobs between 2012 and 2017). At the same time, in the Spanish case, there are the alternative operators who invest in rail freight, thanks to the opportunities created by liberalisation, at the same time as the activity of the public operator was declining.

In the postal sector, the development of e-commerce leads to the development of parcel delivery and distribution services, even if these services are partly integrated directly with merchants. In this sector, innovative services favour the entry of start-ups on the market.

### ***Societal effects***

The introduction of even progressive, controlled and regulated forms of competition and market logic spontaneously leads to the development of trends towards social, territorial, generational and environmental polarisations.

Operators' value production strategies lead them to implement social segmentation of markets, therefore challenging the previous principles of equal treatment, which are part of the common values of the EU and its Member States.

But social segmentations may ultimately jeopardise both universal access to services (for instance, in the 'sensitive areas' of the suburbs of some large cities) and their affordability.

In all sectors, budgetary rules and cost-based service funding have led to a steady increase in user fees. The affordability of services requires in-depth studies. It seems to be less integrated in public policies than other economic considerations such as the efficiency, productivity and profit of operators ('reasonable' profit according to state aid rules). There seems to be no articulation between these considerations and the affordability that ensures universal access to services. Not only are regulated prices rising, but price liberalisation does not necessarily lead to lower bills for users (sometimes due to additional taxation to support other public policies in the sector, for example, to support renewable energies).

In fact, the guarantee of universal access to SGEIs tend more and more to be ensured not by their affordable character, but, at least for some users, by the development of a social policy targeting a small part of those in need (the poorest – policies of fuel poverty following its inclusion in the electricity directive,<sup>5</sup> free universal postal service for blind people that is admitted by the postal directive), by the change in consumer behaviour (reduced energy consumption, less use of transport services), through the empowerment of consumers. The emerging trend is that of the disengagement of previous forms of internalisation of social

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<sup>5</sup> A website of the European Commission gathers measures implemented by Member States: <https://www.energypoverty.eu/policies-measures>

solidarity, even if national monographs identify the survival of some old approaches (for example, free rail transport for all children, students and pensioners in Slovakia). In these cases, all taxpayers cover the costs of the service. However, in a liberalised environment, as shown by the Spanish report for the postal sector, a regulated price that is too low can become a barrier to competition and market entry since competitors cannot ensure their economic viability below a certain price level, whereas the public subsidy is granted only to compensate for the low price of the universal service for which only the incumbent operator is responsible.

However, competition may have contributed to developing services at lower prices in some market segments. For example, the delivery of parcels in relay or automatic delivery points costs less for the recipient, since he does not benefit from a distribution at home but has made the choice to recover directly his parcel at the point of delivery. In the electricity sector, there are more and more alternative distributors and regulations aimed at promoting their entry into the market and offering lower rates. However, until now, tariff cuts have not been high enough to encourage a significant switch of operators. And the change of operation is not always the guarantee of a lower price, with the Spanish case showing that many customers who have changed their operator have had to pay higher prices because of false advertisements. Such practices raise the question of the regulation of the relationship between consumers and operators.

In the liberalised context of other sectors (air transport, communications, high-speed rail), we have also seen the development of 'low-cost' pricing systems. While these systems allow certain users in certain circumstances (upstream purchases, promotions, bonuses) to be able to access lower or very low rates, they do not guarantee universal affordability because they do not ensure either equal or fair access (access to these rates is not necessarily proportional to users' financial capacity).

The same phenomena of segmentation tends to develop at the territorial/local level. The example of "white areas" and "grey areas" of telecommunications networks is well known. But we also tend to find the effects of market segmentation both in the French debate on the maintenance of "small railway lines" and in the abandonment of rural areas by German rail operators, as well as in the progressive disengagement of postal offices from rural areas.

In two other areas, the trends are peculiar, but have the same consequences in terms of polarisations. The introduction of competition, market logic and variations in financial results or share prices lead to an attempt to limit spending. This can lead both to pressure on the wage bill (jobs and salary conditions), to limit or postpone research and development spending that has only long-term profitability and to reduce maintenance expenses or future investment. All these elements tend to favour short-term gains over long-term goals and therefore over the real sustainability of the service and the interests of future generations.

In the same way, these logics develop tendencies to externalise as much as possible the negative consequences of the activity of the operator on his environment, which raise the problem of the socialisation of negative externalities by the community, while the service operator appropriates positive externalities.

## Central and Eastern European countries: the "legacy" of the forty years of domination of the "Soviet model"

The political and economic transformation of the countries of Central and Eastern Europe after 1989 has been largely marked by their common past, not only after World War II, but also before it. Several countries, e.g. former Czechoslovakia, Hungary, parts of Poland and Romania, and former Yugoslavia have been part of the Austro-Hungarian Monarchy for centuries, and it is obvious that their common history has influenced their further development.

After World War II all of these states became the so-called satellites of the Soviet Union and during the following forty years they all functioned as centralised and planned economies, which had considerable impact on the development of the industrial, agricultural and services sectors. The existence of the totalitarian political system has blocked technological development and innovation, and the paternalism of the state has minimized individual initiative and creativity. During these four decades, the private sector and entrepreneurship have hardly existed. There were a few exceptions, such as agricultural production in Poland, which even during central planning was provided mostly by private farms. Similarly, the socialist government in Hungary and former Yugoslavia allowed private entrepreneurship to small craftsmen and merchants. On the contrary, former Czechoslovakia was an example of strict adherence to exclusively state ownership of production factors. In spite of these exceptions, the provision of public services including railway transport, electricity and postal services in all CEE countries were the responsibility of state-owned enterprises.

Central planning and management in rail transport was visible right after the post-war reconstruction of **railway** infrastructure. State-owned railway companies that had a monopoly were not able to compete with the faster-developing car traffic. Their bureaucratic structures have lost flexibility and have failed to respond to the needs of customers in both freight and passenger transport. The situation was also aggravated by the introduction of the so-called The Soviet model of traffic management (especially in Hungary), which emphasized the notion that its application will put an end to harmful competition in transport, as the state will provide all modes of transport most effectively by central planning. Although open competition between public transport companies did not exist, its hidden form manifested itself at the highest level of state administration. Subsidies for individual modes of transport were decided at the ministries according to the power status and the influence of their highest communist party leaders. The gradual increase in car traffic and the fast-growing road network caused the state transport policy to focus on developing the social function of railways in virtually all countries of the Soviet bloc. The main objective was to provide cheap passenger rail transport services and to extend them to regional railway lines to be available to as many people as possible. Rail transport has become one of the social policy instruments of the state, which has mainly used the policy of low prices for passengers and a dense passenger rail transport network. The result was chronic losses of state railway enterprises and the need for constant subsidies from the state budget. Investments in building or innovation of railway lines and trainsets were minimal. As a result, rail infrastructure and trainsets were becoming increasingly worn out and the rail transport quality in this part of Europe was significantly behind the developed European railways in Western Europe.

After World War II., similarly to the railway sector, the **energy** sector was nationalized too. Central electricity supply management required the creation of a single electricity system as well as the transition of all electricity companies, urban, local and private power plants to state ownership. Particularly in the more industrialized regions of the former Austro-Hungarian Empire, there were a number of private electricity producers, as in the past, businesses themselves produced electricity for their own needs. Nationalization of the energy sector in the spirit of social policy has brought the advantage of low electricity prices. Governments of CEE countries have invested in the construction of large hydroelectric and nuclear power plants in line with the policy of the Soviet Union and they were often built with the help of Soviet experts. The goal was to provide enough cheap and affordable electricity. On the other hand, it should be emphasized that low energy prices have led to its wasteful use, both by state enterprises and by the population.

The development of **postal** services in the former Austro-Hungarian Empire had been fully in state competence since 1722, when the era of hereditary postmasters ended. In the successor countries of the Austro-Hungarian Empire, the management of postal services by the state authorities continued during the period between the wars, and therefore the emergence of centrally planned economies did not bring anything new to the management of postal services. In particular, changes have occurred in the context of the scope and the types of postal services. New transport opportunities, the growing road and rail network as well as new means of transport created the preconditions for providing postal services also in those CEE regions that were difficult to access in the past. The positive trend in postal services development, especially after the end of the Second World War, was gradually slowed down by the limited state investments in this area. The lagging of centrally planned economies behind developed countries has been significantly reflected in postal services, which have not been such a priority like e.g. the rail transport or the energy sector. Post office buildings as well as their equipment and technologies reflected the lack of investment in this area of public services. With the emergence of automation and information technology, the backwardness in the scope and quality of the postal services provided has been further enhanced.

### **Case study: liberalization of public services in Slovakia**

Research on liberalization in Slovakia, was focused on three important sectors of the public services network, namely rail transport, electricity and postal services.

#### ***Rail transport***

**The rail transport** in Slovakia had been managed until 1989 by the state-owned company Československé dráhy - ČSD (Czechoslovak Railways), whose subsidiary Východná dráha (Eastern Railway) managed the service on the Slovak territory. Following the creation of the Independent Slovak Republic (SR) on 1 January 1993, the public company, *Železnice Slovenskej Republiky - ŽSR* (Slovak Republic Railways) was set up. The Law 258/1993 on *ŽSR*, defined it as a public company under both public and commercial management mode. It also defined the conditions for foreign operators to enter the market. In 1994, Slovakia joined the Trans-European Transport Network (TEN-T) project on multimodal corridors. An important step in the future development of rail transport was the Government Resolution 499/1995

on the Programme for the Transformation and Development of Rail Transport until 2000 which transformed ŽSR into a commercial company.

In 2002, ŽSR was divided into two independent entities: ŽSR, a public company, whose purpose was to manage the railway infrastructure, and *Železničná spoločnosť (Rail Company)*. In the same year, ŽSR became a member of the European Rail Community. Since then, ŽSR has been the railway operator in Slovakia, which means that it manages and operates the railway infrastructure and provides services related to this operation. It is also responsible for the construction of new infrastructure and the maintenance of the existing ones. In 2005, *Železničná spoločnosť* was reorganised and divided into two public companies: *Železničná spoločnosť Slovensko – ZSSK (Slovak Railway Company)* that transports railway passengers and *Cargo Slovakia* (hereafter referred to as *Cargo*) that is in charge of the transport of goods.

Currently, ŽSR, ZSSK, and *Cargo* are directly involved in providing rail transport services and two other entities active in the railway transport sector are the Ministry of Transport and Infrastructure, and *Dopravný úrad - DÚ (Transport Office)*. The last one assumes the function of price regulation on national and regional railways, as well as one of investigation and safety of railways. Regarding the private transport companies, currently 36 enterprises own valid transport licences on the Slovak rail market, of which only 9 for the transport of passengers, 1 for the transport of passengers and goods and 26 for the transport of goods.

Although several private companies are active on the railway transport market, the liberalisation has not led to the expected competition. Liberalisation first developed for the market for the transport of goods, following the entry into the force of Directive 2004/51/CE of the second railway package, which completely liberalised this sector of transport in the EU, starting with 1st January 2007. During the same year, the third railway package was implemented in Slovakia by the laws 513/2009 and 514/2009. Its purpose was to liberalise the international transport of passengers, to reinforce their rights and to put into place a single system of licences and certificates of aptitude for train conductors. According to these laws, ŽSR should ensure the access to the railway infrastructure for each enterprise that owns a valid service licence and a safety certificate. The DÚ issues, controls and revokes licences.

Based on the adopted laws, we can conclude that the legislative conditions for the liberalization of the entire rail sector have been created in their entirety and, since 2009, nothing has hindered liberalization. In 2011, *Antimonopolný úrad (Anti-monopoly Office)* of the Slovak Republic published a report in which it confirmed that the Slovak railway transport had been completely liberalised: the transport of goods since 2007 and the transport of passengers since 2010. In 2010, 29 enterprises owned a licence allowing them to operate on the railway network of ŽSR, 25 of which were effectively active on the market: 2 passenger transport services and 23 goods transport services. The anti-monopoly authority, among the first economic consequences of liberalization, presented the key problems of competition on the railway market:

Market entry barriers are one of the most serious obstacles to the liberalization of the rail market. Slovakia in the international comparison through ACCESS Index occupied the fourteenth position among the Member States. For instance, the access to the rolling stock is very difficult. Railway infrastructures, which were built in the 1970s, are not compatible with

the contemporary electric locomotives. Consequently, the new transporters entering the market and wishing to use modern electric locomotives cannot obtain an authorisation to operate. They can only use old electric locomotives that are exclusively owned by the state undertakings ZSSK and Cargo. As in reality there is nearly no market for the leasing of electric locomotives, the new private transporters are obliged to use only diesel electric locomotives, of which cost is much higher; moreover, the cost of operation of diesel locomotives on electrified lines implies supplementary fees. Another difficulty concerns the refuel of diesel oil. On the occasion of the creation of the three railway transport companies - ŽSR, ZSSK, Cargo, the last one became the single owner of the equipment for refuelling and it refused the access of private transporters to refuelling facilities. Therefore, these had to use mobile tankers to refuel. Ensuring the entire refuelling process together with securing the dedicated track is administratively, organizationally and financially costly.

The second problem was the regulation of fees for the access to railway lines, as these fees represent a high cost for the transporters active on the national market, which provokes unbalanced conditions of operation between the rail and road transport. Even if the Directive 2001/14/EC recommended calculating the fees of utilisation of railways on the basis of the marginal cost, this recommendation was not applied in Slovakia. The fees applied in Slovakia contained both fixed and variable costs, and the fixed costs are particularly high as the country's railway network is one of the densest in Europe (according to the statistics developed by the United Nations Economic Commission for Europe – UNECE – in 2016 Slovakia owned the seventh densest railway network in the EU). It was only after January 2011, after the entry into the force of the DÚ's Regulation 3/2010 that the mode of calculation of these fees was amended, which provided a fixed ceiling cost for the access to the railway infrastructure. The objective of these modifications was to reduce the weight of these fees in the transport price.

Another problem is a strong state influence in the railway sector resulting not only from the ownership and control of ŽSR, CARGO and ZSSK by the state, but also from the fact that these companies are also financially "dependent" on the state. They are the recipients of important subsidies from the state budget or other forms of aid. The state's influence through the subventions conferred to state transporters generally led to higher fees for others – therefore, it is about the presence of a political aspect in this sector.

Inappropriate interoperability and the quality of the railway infrastructure is another problematic issue. The relatively weak level of the railway infrastructure is linked to the preference of the road infrastructure (higher public investments for highways). Therefore, railway infrastructure is technologically outdated and incompatible with the European system. Thus, in practice, foreign railway companies can only ensure the transport of goods until the Slovak frontier where the national transporters take them in charge by changing the locomotive and the personnel and reciprocally.

Finally, the serious problem is the behaviour of the state transport undertakings. They try to maintain their position on the market, which manifests itself through the fact that the manager of the infrastructure (ŽSR), which is owned by the state, favours public undertakings when allocating infrastructure capacities. The dominant transport undertaking refuses access to the infrastructure to new transporters and can use different pricing practices aimed at pushing competitors out of the market or preventing their market share from growing.

An important intervention in the passenger rail market was the Government Regulation of November 2014 that rendered free of charge rail transport for children from 0 to 15 years old, students until 26 years and seniors over 62 years old. This measure undermined the conditions of free competition and worsened the position of the private personal rail transporters who have to cover transport costs only from their own resources.

The favourable position of public transport undertakings is also reinforced by the way the contracts in the general public interest are organized. The contracts concluded by the state with ŽSR, ZSSK and Cargo do not contain mechanisms that would encourage them to reduce their costs and therefore to be more efficient. The sanctions applied by the competition authority, the Antimonopoly Office to public transport undertakings for the abuse of their dominant position in the market also prove the fact that their competitiveness is not as high as expected after the liberalisation. For instance, in 2012, Cargo paid 2.49million euros of penalty for the abuse of the dominant position on the market and, in 2014, a 10.253 million euros penalty for having limited the sell and leasing of electric locomotives to the private competitors. Despite the dominant position of Cargo, the 2016 annual competition report observed the growing competition, in particular on the East-West and North-South lines. It seems that Cargo's performance is also influenced by the situation in Ukraine and the EU sanctions against Russia.

### **Electricity**

**The all energy companies** in former Czechoslovakia were nationalised after the Second World War. In 1969 after the complete electrification of Slovakia the *Slovenské energetické podniky – SEP (Slovak Energy Company)* was created as the single company supplying energy on the Slovak territory. During the process of transformation of the planned economy into a market economy, the SEP was separated into three energetic companies that became independent public undertakings: *Západoslovenská energetika - ZSE (West-Slovak Energy)*, *Stredoslovenská energetika - SSE (Center-Slovak Energy)* and *Východoslovenská energetika - VSE (East-Slovak Energy)*. Subsequently in 2002, the Slovak Government decided to transform them into public limited companies. The state remained the majority shareholder (51%) and the remaining shares were sold to foreign shareholders: the German company E.ON acquired shares in ZSE, Electricité de France in SSE and the German group RWE in VSE.

After Slovakia joined the EU, the process of liberalization in the energy sector began. Directive 2003/54 EU concerning common rules for the internal market in electricity was incorporated into Slovak legislation by the Energy Law 656/2004, which entered into force in July 2007. By this legal norm, the distribution of electricity is a regulated activity, separated from its selling - that, on the contrary, is subject to free market. It was during this period that the Slovak market with electricity experienced the most significant liberalisation. At that time, each of the three companies ZSE, SSE and VSE split into two, one distribution company and one trading company. Currently, there are three mentioned regulated companies in the area of distribution and 37 electricity providers authorized to buy and sell electricity. Therefore, Slovak consumers can choose their electricity supplier. Their key criteria should be based on the quality of the services provided, energy advice related to delivery, and, of course, price. In reality, the choice is quite limited. When selecting a supplier, the consumer signs two contracts: one for the connexion to the grid with a distribution company, the other for the electricity supply with a seller. The invoice he pays includes the price of electricity itself as well as that of its distribution, and then the seller pays this second component of the

price (transmission of electricity by lines) to the distribution company. The final consumer of electricity cannot choose the distributor because it depends on the geographical location of his residence. To resume, the sellers (suppliers) of electricity buy the electricity from producers and resell it, with a certain margin, to the final consumers. The final price of electricity depends on the conditions that suppliers are able to negotiate on the market.

Although there are 37 electricity suppliers in Slovakia, the three of them ZSE, SSE and VSE, which have separated from distributors, are the most important players. Since the total number of delivery points in Slovakia is about 2.3 million, those delivered by additional 34 suppliers represent only about 7%. However, the share of the three “traditional” suppliers is decreasing. While in 2012 their share of electricity supplied was about 71%, in 2016 it only represented 56%. In the household sector, their share represented 96% in 2012 and decreased by almost 10% until 2016 in favour of alternative suppliers. The impact of this increased competition on the electricity price trends is less obvious. One of the reason is the fact, that the price of the electricity to final consumers is the result of three components: the price of electricity itself, the costs of transmission and distribution, and fees. Only the price of electricity as energy is determined by the market, the other two components being subject to regulation. Anyway, the competition and the liberalisation of energy prices have increased energy saving awareness among Slovak consumers. They have gradually sought opportunities to reduce their heating costs, water consumption, to purchase more efficient household appliances and lighting. For example, according to the Eurobarometer survey of September 2012, when the inhabitants of 27 European countries have been asked if they have replaced their household appliances with more modern and energy efficient equipment, 54 % of them answered positively, while among Slovaks, this percentage rose to 81 %.

Another element of the liberalization of the market with electricity is also the liberalization of electricity production. The electric power generation in Slovakia is carried out in several types of power plants; even so, two nuclear power plants produce the majority of the electric energy. The dominant player on the market of energy producers remains undertaking *Slovenské elektrárne (SE)*, which manages both of the nuclear power plants, 2 thermal, 31 hydro and 2 photovoltaic power plants. According to 2018 data, SE is the largest producer of electricity (69 %) while the share of nuclear power plants was 81.92 %, thermal power plants 10.47 %, hydro power plants 7.60 % and photovoltaic power plants 0.01 %.<sup>6</sup> Other domestic producers, with the exception of SE, have produced 17 % of electricity in 2018 and the remaining 14 % of electricity was imported. The liberalization of the electricity generation has not brought real competition, since the dominant position of SE is evident. Some form of competition on this market is more likely to exist among producers that are complementary to the SE production. More specifically, there are dozens of electricity producers who own small hydroelectric power plants as well as producers of the so-called green energy owning two wind farms and several biomass power plants.

### ***Postal services***

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<sup>6</sup>Slovenské elektrárne: Annual report 2018, <https://www.seas.sk/data/publishing/516/file/slovenske-elektrarne-annual-report-2018.pdf>

*Slovenská pošta (Slovak Post)*, the public company, have been in charge of **postal services** since the establishment of the Slovak Republic in 1993. Ten years later, in 2004, *Slovenská pošta* changed into a joint-stock company owned by the state.

Following Slovakia's accession to the EU, the functioning of the postal services market has changed in line with the European rules. During the liberalisation process, private companies began to participate in the provision of these services, which led to the emergence and development of competition. Since 2008, an amendment to the Law on postal services has guaranteed *Slovenská pošta* exclusivity in the delivery of postal services of less than 50 g, which gave it a monopoly situation concerning the distribution of the so-called hybrid mail<sup>7</sup>. In 2012, a new law on postal services came into force, which on the bases of the European Directive 2008/6, abolished this exclusivity and thus established a total liberalisation of the market. At the same time, the conditions of access to the public postal network of potential hybrid mail providers was defined. At the end of 2012, there were 21 companies providing other postal services on the market outside of *Slovenská pošta*, 7 of which were hybrid mail service providers. Currently, there are 25 national and international private companies on the market, including 6 hybrid mail services, although *Slovenská pošta* remains the sole provider of the universal postal service and thus has a dominant position in mail delivery.

Due to the liberalisation of postal services, the mode of financing of *Slovenská pošta* was changed by the creation of a Compensation Fund. This fund finances the universal service through a special account in the Treasury, which has been created and is managed by the *Regulatory Office*. *Slovenská pošta*, as a universal service provider, is entitled to a compensation from this Fund if it has to bear a net financial cost that represents an 'excessive' financial burden for it. The Regulatory Office is in charge to assess the existence of an excessive cost. For each postal company providing interchangeable services, it determines the obligations to contribute to the Compensation Fund. The contribution shall not exceed 3% of the turnover of the undertaking concerned. For example, for the year 2016, the Office determined, based on data provided by *Slovenská pošta*, the net cost of the universal service at the level of 12.2 million euros, and its 'excessive' cost, which can be reimbursed by the Compensation Fund, at the level of 9.2 million euros.

An important criterion for evaluating the results of the liberalization of postal services is their quality. According to the Report of the *Regulatory Office* and other studies carried out between 2013 and 2016, *Slovenská pošta* can be found to meet quality standards in terms of the speed of delivery. The improvement of this indicator is mainly due to the market liberalisation, which has allowed several private providers with faster postal services to enter the market and forced *Slovenská pošta* to face it. One of the decisive factors influencing customer satisfaction with postal services is their price. Based on statistical indicators, it can be seen that in the context of the gradual liberalisation of the services market, the price level of some services has decreased, of others it has increased. Price increases concern mainly the delivery of letters because their quantity is decreasing due to electronic communications, which results in an increase in the average cost of this service. Since 2013, the price of 1st and 2nd class letters has increased by 5 cents; however, parcel prices have decreased by 10 cents. In addition, thanks to competition, *Slovenská pošta* has been led to

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<sup>7</sup>Combination of physical and electronic means.

increase the quality of its services (e.g. automatic postal terminals, post office equipment), which has also contributed to customer satisfaction.

The liberalization of postal services and the increasing competition forced *Slovenská pošta* to rationalisation measures. In the effort to rationalise and optimise its activities, including the outsourcing of certain secondary activities, the number of *Slovenská pošta* jobs has been decreasing since 2008. On the contrary, the total number of workers in the sector is increasing, due to the arrival of private postal service providers. The liberalisation of services of general economic interest in Slovakia only started at nearly the end of the first decade of the new millennium. There was therefore a 'catch-up' to be made in relation to the 'old' European countries. It is understandable that the process of liberalisation in these sectors, which have long retained a monopoly character, has been gradual and might probably never reach the level of market opening for industrial goods.

However, liberalisation has undeniable beneficial effects in Slovakia on several levels, in particular, on the quality, scope and breadth of the services offered. There is room for improvement in the affected markets by removing the barriers to increasing competition, in particular by operating dominant undertakings, former monopolies. Market liberalisation is progressing thanks to the European legislation in young market economies in Central and Eastern Europe, such as in Slovakia. In many respects, it depends on the capacities and competences of the national state, the government and its willingness to eliminate existing legislative deficiencies, inconsistencies in the legal system, such as a weak law enforcement, as well as efforts to vigorously fight corruption through effective control.

To summarise the current state of liberalisation of services of general economic interest in Slovakia, the rail infrastructure has remained in state ownership. Among the carriers, there are two dominant public (state) companies and about thirty private companies. In the electricity sector, former state-owned enterprises have been transformed into joint-stock companies in which the state has the majority or the minority of the capital; the remaining part of the capital is a private, mainly foreign capital. Market liberalization has gradually made it possible for private companies to enter the market, but their market share, even if they are competitive with each other, does not really allow them to compete with large state-owned co-ownership companies. In the field of postal services, there is a traditional dominant undertaking owned by the state, and it is the only one authorised to provide the universal service, however for the other services in the sector, competition has indeed developed.

In all three SGI sectors surveyed in Slovakia, we can identify several economic effects that manifest themselves in market oligopolisation, market competition, a change in the legal status of businesses and also in financing. In addition to economic, we also observe the social impacts that are reflected in changes in the number of employees in the sector, but also in new forms of employment and changing working conditions. The situation regarding the availability of services as well as the behaviour of consumers, especially in relation to environmental problems, is also changing, which shows that liberalization also has societal effects.

## Synthesis

Aiming to explore ways forward for the 2020s, we have to take into account these situations, to find the best possible evolutionary balance between, in particular:

- Europeanisation – which is essential in the global situation – and the responsibilities of national, regional and local authorities;
- market economy and public initiatives;
- economic and financial efficiency, on the one hand, and solidarity and social and territorial cohesion, on the other; between short and long term.

It attempts to overcome the opposition that has developed between the two paradigms that have long structured the organization and regulation of public services or services of general interest - on the one hand, the integrated monopoly and, on the other hand, the competition paradigm - in order to explore a "paradigm of values" based on the gradual emergence of "common values" shared by the European Union and its Member States. This approach involves clarifying the complementary responsibilities of the European Union and national, regional and local authorities.

In the unity-diversity relationship that structures the Europeanisation of services of general interest, as in any other area subject to this process, unity does not reside in:

- the different words and terms used in each of the languages,
- nor in the concepts more or less elaborated in national constructions,
- nor in different economic, social and political histories,
- nor in legal or political doctrines - to which the French and other Europeans such as the Spanish - are very attached, but which are part of specific secular constructions and are not "universal" in Europe.

Unity is about shared or common values of the European Union and its Member States, which are also common to a model of society – to a civilisation. It is this unity that provides the basis for the search for new solutions for the 2020s and 2030s.

This is how we can propose to put the EU back in its role, just its role, but all its role:

- Starting from the needs of all users and their evolution, from fundamental rights and common values, which must be the subject of real guarantees, and from the objectives defined in particular in terms of environment, the fight against climate change or long-term sustainability, to enrich and revise the policies and standards developed over the past 30 years;
- internalize all positive and negative externalities of each technological or economic solution;
- put competitive logics in their place, when they are a stimulus for innovation, effectiveness or efficiency;
- encourage the development of regulatory approaches and progressive dynamics of participatory evaluation at each territorial level.

An EU based on the principle of subsidiarity, the combination of unity and diversity and the deployment of the common values of the European Union and its Member States is the key

to implementing a modern conception of services of general interest, based on the *acquis* and responding to the challenges and needs of the 21st century.

For their part, and in a convergent manner with European initiatives, Member States should:

- organise the expression of the needs of each service user and on service developments in such a way as to be able to clearly define the objectives and missions of each service on which its character as a public service or service of general interest is based, the specific rules and standards to which they are subject, the "public service obligations" (PSO) and/or "universal service obligations" (USO);
- determine the relevant area and the most suitable mode of organisation of the activity and of the sector concerned for the defined purposes (exclusive or special rights, competition, "coopetition", combining the respective advantages of competition and cooperation); the mode of financing of the activity, of the access to the service and of the compensation of obligations (OSP or OSU) imposed on operators;
- these initiatives and responsibilities, to be carried out successfully, require commitment to the complementarity of "top-down" and "bottom-up" approaches, to democratic participation, co-definition, co-organisation of public service or services of general interest.