

SERVICES PUBLICS ET CONCURRENCE EUROPÉENNE : CONTRADICTION OU CONCILIATION ?

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RÉSUMÉ

L'Union européenne veille à ce que les services publics, qu'il s'agisse des services de réseau ou des services sociaux, travaillent dans des conditions économiques et financières qui leur permettent d'accomplir leur mission. Après un long et vif débat, le traité de Lisbonne consacre cette reconnaissance des valeurs du service public et donc du fait que l'application des règles du traité, notamment les règles de concurrence, ne font pas obstacle à leur bon fonctionnement. En dépit de cette évolution, l'idée que les règles du marché unique peuvent dans certaines circonstances s'appliquer à la fourniture de certains services sociaux reste fortement contestée par une grande partie de l'opinion publique, particulièrement en France.

Cette question mérite d'être posée. Pourquoi, en effet, appliquer les règles du marché unique européen aux initiatives que prennent les citoyens pour offrir une réponse aux besoins sociaux ? Ces initiatives ont souvent précédé celles de l'État, des collectivités locales et des entreprises à but lucratif parce que ces derniers n'avaient pas ou n'étaient pas en mesure de répondre à ces besoins. Elles offrent une réponse le plus souvent caractérisée par la qualité, la proximité et la disponibilité que l'on ne trouve pas toujours dans les offres concurrentes, quand celles-ci existent. On peut donc légitimement s'interroger sur l'utilité sociale qu'apporterait l'application des règles du marché unique à ces activités alors même que le marché s'est montré défaillant.

Ce Policy Paper tente de préciser quelle est la situation de droit pour démontrer que l'application des règles du marché intérieur n'a pas pour objectif d'introduire une concurrence sauvage destructrice des services publics. Leur objectif premier est de faire en sorte que la transparence et l'égalité des opérateurs économiques deviennent la règle dès lors qu'il y a un marché.

🔥 L'APPLICATION DES RÈGLES DU MARCHÉ INTÉRIEUR N'A PAS POUR OBJECTIF D'INTRODUIRE UNE CONCURRENCE SAUVAGE DESTRUCTRICE DES SERVICES PUBLICS

C'est sans mal doute une évolution profonde de la relation entre les collectivités publiques et les institutions privées chargée d'une mission d'intérêt général. Les personnes publiques ont à cet égard une grande responsabilité car elles disposent d'un large pouvoir d'appréciation pour définir ce qu'est un service social d'intérêt général. Cette évolution demandera du temps vu l'ampleur des changements de comportement qu'elle suppose.

Si des contestations subsistent, c'est avant tout parce que la transition n'a pas été bien gérée : les obstacles n'ont pas été identifiés, les étapes n'ont pas été aménagées et l'on est donc resté dans le débat de principe, parfois idéologique, sur les mérites ou les méfaits de la concurrence, dont la construction européenne fait souvent les frais.

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