

FROM COMPETITION TO REGULATION UTILITY PRICE CUTS IN TIMES OF CRISIS*

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When the European Economic Community was established in 1957, there were significant differences between the six founding countries in terms of the role of the state in the economy, which determined the relationship of European integration as a whole to public services. Currently, the regulation and organisation of public services is closely linked to several "strong" EU policies, and there are serious governmental interests behind the inclusion and wording of each provision relevant to this issue in the founding treaty. This study presents this development from a Hungarian perspective, focusing primarily on the example of the official pricing of public utility charges.

Keywords: services of general economic interest, energy supply, official price setting

Public services are an indispensable part of our everyday lives, and when they function without problems, we take them for granted and are not even really aware of their existence in our daily routine activities. However, in the event of a power cut (even if only for a few minutes), a burst pipe or a broken overhead railway line, the absence or deterioration of these services can cause serious disruption to our work, other tasks or even leisure activities.

European integration has a similarly ambivalent relationship with public services. This area has never been at the centre of debates on the existence and purpose of the European Union, but the regulation and organisation of public services is closely linked to several "strong" EU policies, and there are serious governmental interests behind the inclusion and wording of certain provisions relevant to this issue in the founding treaties. This study presents this development from a Hungarian perspective, focusing primarily on the example of the official pricing of public utility charges (hereinafter "utility price cuts" or "reduction of utility costs").

1. Public services and European integration

When the European Economic Community was established in 1957, there were significant differences between the six founding countries in terms of the role of the state in the economy. Countries with a strong private sector from the outset feared that state-owned companies in countries with a stronger state role in the economy would squeeze smaller private enterprises out of the market, and therefore argued for stricter competition rules. The latter countries, on the other hand, wanted to preserve the privileges of their state-owned companies. In the final stage of the negotiations

* DOI 10.21868/PGnG.2025.1.3.

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preceding the Treaty of Rome, a compromise solution was finally reached. A separate provision on public services (in EU legal terminology, services of general economic interest) (currently Article 106 of the Treaty on the Functioning of the European Union, hereinafter TFEU) conveys a message that satisfies both interest groups: the first paragraph stipulates that public undertakings and public monopolies shall be subject to the rules of competition applicable to undertakings in the same sector, while the second paragraph stipulates that Member States may grant public undertakings certain exemptions from competition rules. Article 106) conveys a message that satisfies both interest groups: the first paragraph stipulates that the general provisions of the founding treaties shall apply to public undertakings and state monopolies, with particular emphasis on competition rules. The second paragraph, however, allows for exceptions to the application of these provisions in the case of companies providing services of general economic interest (Heinemann n. d.). Similar strategic interests also guided the drafting of the article declaring the inviolability of the existing ownership structure in the Member States (currently Article 345 TFEU), which later became decisive in justifying the maintenance of state ownership in public service companies.

Based on all this, a compromise was reached whereby the organisation and financing of basic public services would remain primarily within the competence of the Member States. For this reason, services of general economic interest did not really become a 'European issue' in the early decades of integration. However, their role and significance have changed over time. The 'Europeanisation' of public services as an objective first appeared in the mid-1980s with the entry into force of the Single European Act (SEA), which set the goal of establishing a single internal market by 31 December 1992. As national transport and energy markets increasingly came within the scope of the internal market programme, public service obligations increasingly appeared as obstacles to the creation of the market (Prosser 2005). Thus, the process initiated by the SDE led to the extension of liberalisation, which was implemented sector by sector. From this point on, the European Union's use of terminology, which differs from traditional 'public services', also becomes interesting: 'services of general (economic) interest' emphasises the public interest nature of the service much more than the nature of the organisation/institution providing the service. In other words, the EU terminology is more appropriate for expressing the idea that services of general interest can be provided effectively not only by the state or entities linked to it, but also by private providers (Bartha & Horváth 2019) (regardless of this, the two terms will be used as synonyms in the following).

At the same time, liberalisation has also led to tensions, and protests and movements have been launched to amend the EU's founding treaty with the aim of making the unique nature of public services, i.e. their exceptional status from a market regulation perspective, more clearly recognisable at the level of legal regulation. These critical voices led to the adoption of the Commission's first communication on services of general interest in 1996, which paid particular attention to the social elements of public services in this area and the limits of market forces. Subsequently, the Treaty of Amsterdam added a new provision to the founding treaty (now Article 16 TFEU), which confirms the constitutional significance of obligations relating to services of general economic interest and the need to protect them among the fundamental principles of the European Union. Although its actual legal relevance was rather questionable, it did have

the effect of reducing the perception of services of general economic interest as obstacles to the completion of the internal market. This approach has been confirmed by the practice of the Commission and the Court of Justice of the European Union (CJEU), and with the adoption of the Charter of Fundamental Rights of the European Union, the right of access to services of general economic interest has been enshrined in a specific provision (Article 36)(Bartha & Horváth 2019).

This process has been of decisive importance in the liberalisation of certain sectors, particularly in the field of public utilities. Although market opening and market access remained the fundamental policy objective, other priorities were also pursued in parallel (for details, see Horváth 2013). This "paradigm shift" later became an important pillar of Hungary's public service policy and regulatory measures.

2. After the 2004 EU enlargement

Following these events, the biggest enlargement in the history of integration took place on 1 May 2004, when ten Central and Eastern European countries, including Hungary, joined the European Union. Even then, public services did not become a campaign issue; both those in favour of and those opposed to enlargement primarily presented arguments and counterarguments related to the free movement of goods, cross-border employment and business, agriculture and EU funds (remember the possibility of opening a Viennese pastry shop or concerns about the loss of poppy seed rolls). Regardless of this, EU accession was of decisive importance for the organisation and financing of public services in Hungary for several reasons (the summary is based on Horváth 2002; Horváth 2015; Horváth & Bartha 2016; Horváth & Péteri 2001).

i) One of the conditions for joining the European Union was to ensure a functioning market economy based on the Copenhagen criteria, which was in line with the privatisation process following the change of regime. After 1990, for a long time, it was primarily the transformation of former state-owned property and privatisation that influenced the organisation of public services. In addition, as a result of the aforementioned EU-level liberalisation, the accession process aimed to open up many areas of public services to cross-border market competition.

ii) However, it is not privatisation alone that is decisive in creating competition between service providers, but rather the creation of a market environment. Of course, the existence of privately owned public service providers is a fundamental tool and condition for this, but the establishment of a regulatory framework consisting of an independent institutional system and associated supervisory bodies is at least as important. The independent institutional system primarily refers to regulatory authorities that are independent of the government, which Member States were required to establish under directives aimed at liberalising individual sectors, precisely in order to maintain market balance. In the Member States that joined in 2004, including Hungary, this typically required a significant overhaul of the organisational and administrative structure of the public sector.

iii) In addition to the above, the harmonisation of national legislation with EU regulations posed a challenge for the new Member States of Central and Eastern Europe in a number of areas. Thus, prior to accession, legislation on water and environmental protection (including waste management) in most Central and Eastern European

countries was fraught with shortcomings and contradictions, and some of these problems persisted for some time after accession in certain countries (including Poland, Romania and Hungary).

iv) Access to pre-accession funds and, after accession, to funds available to existing Member States, in particular the European Accession and Investment Funds, was of crucial importance in terms of achieving (or at least improving) compliance with EU harmonisation requirements. For example, the screening of public waste service providers and the restructuring of landfills in line with the principles of economies of scale in Hungary was already implemented during the pre-accession period with the support of the ISPA project. At the same time, Hungary has also relied on EU funds for the development of many other areas, such as water utilities, healthcare, education and public transport infrastructure.

v) Accession also brought the issue of regionalism to the fore, as the most significant source of funding within the Structural and Investment Funds (the European Regional Development Fund) is now allocated on a territorial basis. The EU did not impose any explicit legal harmonisation obligations for the establishment of a regional public administration system, but the technical capacity and regional organisational frameworks had to be created for the distribution of ERDF resources.

Hungary had largely fulfilled its obligations relating to the regulation, organisation and financing of public services by the date of accession. However, some shortcomings remained. The last country report prior to accession, in 2003, essentially highlighted the need to strengthen the independence of regulatory authorities in certain sectors (such as natural gas supply and telecommunications) and the shortcomings in the transposition of directives aimed at liberalisation in terms of the accessibility and quality of services in some areas (telecommunications, postal services). Furthermore, privatisation on the scale necessary for a functioning market economy had not been fully achieved (in 2003, 19 state-owned companies were still on the 'waiting list'), and the state continued to hold golden shares in a number of already privatised companies (European Commission 2003). However, some of these shortcomings were brought into line with EU legal requirements in the years following accession.

3. Less European, more national

Following the 2004 EU accession, the paradigm shift in the regulation of public services mentioned above has been further reinforced in the now 25-member Union. The SGEI provision introduced by the Treaty of Amsterdam (Article 14 TFEU) was supplemented by the Treaty of Lisbon with an explicit reference to the protection of national autonomy and the regulatory powers of Member States. When read together, Article 14 and the supplementary protocol placed even greater emphasis on national and local interests, and a more national-centred approach emerged in the protection of public service values. The political message of the authors of the Lisbon Treaty is therefore clearly to protect services of general economic interest and related local interests against liberalisation (Krajewski 2011, 186; Marćou 2016, 14). At the same time, the scope of exemptions from market integration obligations was also broadened the Union's sectoral rules with regard to Member States' public service obligations (Bartha & Horváth 2019; Horváth 2015).

The development of EU-level regulation also reflects broader trends in Member States' public service policies and regulatory processes. In response to the 2008 economic and financial crisis, EU Member States adopted austerity measures and gradually strengthened regulatory solutions that allow greater scope for various forms of state intervention and an increase in the role of the state and the community (Tsekos & Triantafylloupoulou). In the wake of the crisis, the efficiency/effectiveness of the existing administrative structure of public services was called into question in several European countries. Social conflicts led to the radicalisation of politics. As a further response to the crisis, the regulatory role of the state was strengthened and the scope of central government activities was expanded. In some European countries (such as Hungary and Greece), the economic crisis led to a correction in the competition policy for public services.

4. Utility price cuts “in defence of the nation”

Following the change of government in 2010, the central government's political programme in Hungary shifted from a market-oriented approach to emphasising the negative consequences of liberalisation and invoking the “protection of national interests”. Public utilities and their utility charges became the focus of the government's attention. Utility price cuts, i.e. the reduction of consumer charges for public utilities through centralised legal regulation, took place in four waves between 2013 and 2014 (Horváth 2016). Emphasising the results of these measures became an integral part of the government's communication strategy, and a special law was even passed (and is still in force today) requiring consumer bills to show the amount saved as a result of the utility cost reduction (Act LIV of 2013 on the implementation of utility cost reductions). In addition, the court ruling in favour of gas suppliers in the lawsuit they had filed against the (then) Hungarian Energy Office's decision on consumer prices was met with unusually harsh criticism from the prime minister.²

Contrary to our findings about the accession process, we can no longer say that public services are not important from the point of view of Hungary's European policy. The “defence of utility price cuts” – alongside the fight against the private interests of (typically foreign-owned) public service providers – has increasingly become one of the main slogans in the fight against the obligations “imposed” by the European Union. One of the six questions in the national consultation launched in 2017 under the title “Stop Brussels (EU and Member State powers)” began with the statement “Brussels wants to force us to abolish utility cost reductions...” and this topic was also the subject of subsequent national consultations, not to mention other channels of government communication.

5. In times of crisis

The outbreak of the Covid-19 pandemic has presented new challenges for the European Union and its Member States. Unlike the economic and financial crisis of 2008, the pandemic and the restrictive measures that followed did not primarily affect the

² “The court's decision is scandalous. It is a scandal in itself.” (HVG 2013).

financial sector, but many other sectors as well, particularly public services. Member States have taken a number of measures to protect businesses and consumers that would normally be contrary to EU rules on the internal market, competition law or sectoral liberalisation outside times of crisis. The EU's temporary crisis measures have made this possible. The energy crisis caused by Russia's aggression against Ukraine has also had a significant impact on public utilities, in particular electricity and natural gas, and has necessitated further temporary crisis measures by Member States and the Union that are contrary to market forces.

At the same time, we are also seeing initiatives that envisage action at EU level, including in relation to the public services most affected by the crises. One example is joint vaccine procurement, i.e. framework agreements between the Commission and certain pharmaceutical companies to ensure the supply of vaccines to Member States. In addition, a new directorate-general (European Health Emergency Preparedness and Response Authority, HERA) has been set up within the Commission to prepare for future pandemics. The EU has also mobilised significant funds to combat the pandemic and subsequently to restore the economies of Member States, notably through NextGenerationEU, the support programme implemented through the Recovery and Resilience Facility (hereinafter: RRF). Of similar importance among the measures related to the energy crisis is the REPowerEU programme, which (also through the RRF) sets out an action plan and provides financial support to Member States to diversify energy supplies and increase energy efficiency.

The European Union's crisis management strategy is therefore characterised partly by regulatory measures allowing Member States to intervene more extensively on a temporary basis, and partly by recommendations or coordination measures accompanied by significant financial incentives. The question is whether the latter is attractive enough for Member States to take the reform measures required by the Union, changing their policy preferences where necessary. On the one hand, this depends on how and to what extent the country has been affected by the crisis and how much it "needs" EU support to restore its economy. On the other hand, examples from recent years have also shown that the response depends heavily on the Member State's commitment to EU goals and values.

Access to RRF funds is vital for most Member States, including Hungary. At the same time, during the crises of recent years, Hungary has continued to pursue an economic policy that emphasises the protection of national interests and has shown little willingness to meet the conditions necessary for the disbursement of EU funds. Following the energy crisis, the Hungarian government delegation consistently voted against EU legislative amendments aimed at reforming the European energy market during Council negotiations, describing them in its communications as "Brussels' attack on Hungarian utility price cuts" (Permanent Representation of Hungary to the European Union 2022). The main aim of the EU reforms is to accelerate the transition to renewable energy and, at the same time, to make electricity prices less dependent on fluctuations in the price of fossil fuels and to provide consumers, especially vulnerable groups, with greater protection against the price effects of market failures. It is important to emphasise that these legislative amendments were not adopted as crisis measures, but they do empower the Council to declare a crisis situation in the event of a significant increase in wholesale or retail prices. However, Hungary's position is that

this is a matter for national competence, as it can only be decided at Member State level whether it is necessary to declare a crisis situation and reduce utility prices (Permanent Representation of Hungary to the European Union 2022).

Government communication regarding the resilience of the public health care system following the outbreak of the Covid-19 pandemic was based on a similar approach. The questions posed in the national consultation on "The coronavirus and the restart of the economy" in June 2020 emphasised the lack of competence of the EU agency (European Centre for Disease Prevention and Control, ECDC) and, in contrast, the speed and effectiveness of domestic measures. A similar consideration was also behind Hungary's decision in May 2021 – as the only Member State at the time – not to participate in the next round of joint vaccine procurement.³

6. Utility price cuts after the outbreak of the energy crisis

As a result of the energy crisis, the issue of utility price cuts has come to the fore in light of the EU's crisis management priorities: promoting energy efficiency, reducing dependence on fossil fuels and switching to alternative energy sources as much as possible. The European Union considers the most problematic aspect of Hungarian legislation to be its failure to target vulnerable or low-income households, but rather involve measures that are applied regardless of need or income status (the term 'Hungarian people' "Hungarian families" being the term used in government communications to refer to the group concerned) and does not encourage energy saving or the transition away from fossil fuels.⁴ However, the introduction of financial incentives is a new element: the submission of a plan to reform the utility cost reduction system was a prerequisite for Hungary to receive part of the support to be provided from REPowerEU funds. In fact, this is expected to be one of the conditions for the payment of cohesion policy support in the 2028-2034 budget period (Financial Times 2024). Hungary's recovery and resilience plan approved by the European Commission in autumn 2023, and reforms are expected to take effect from January 2026 (including dynamic pricing for electricity bills for consumers with smart meters). In contrast, it is somewhat contradictory that the government's communication continues to focus on defending utility price cuts against the EU. This is evident, among other things, from the first question of the national consultation on "Protecting our sovereignty" also launched in autumn 2023 ("1. Brussels wants to abolish utility subsidies..."), and in the government statement issued in connection with the infringement proceedings launched in February this year due to the inadequate transposition of the fourth electricity directive (Hungarian Government 2025).

Thus, the declared aim of Hungary is to provide public utility services at prices that are "the lowest in Europe" (Permanent Representation of Hungary to the European

³ Hungary subsequently changed its position and received vaccines ordered under the EU procurement scheme at the end of 2021. However, at the end of 2022, relations between Hungary and the contracting manufacturers deteriorated (after Hungary indicated that it would not pay for 3 million doses of vaccine due to the outbreak of war in Ukraine), and Hungary has since been purchasing vaccines outside the EU procurement framework.

⁴ This follows, among other things, from the Commission's 2024 country-specific recommendation (European Commission 2024).

Union 2022). It should be noted, however, that between 2014 and 2020, the fact that energy prices on the global market (with the exception of short-term fluctuations) were significantly below the Hungarian regulated prices was particularly conducive to keeping domestic utility prices low. This is particularly true when we consider that most of the energy suppliers profiting from this had already become state-owned by this time (Horváth 2016; Horváth, Bartha & Lovas 2022; Lovas 2022). However, from mid-2021, as a result of the crises, energy prices on the global market began to rise to such an extent (Horváth, Bartha & Lovas 2022) that Hungary was forced to reform its utility price reduction system so that reduced energy prices are now only available for average household consumption. The system is therefore not at all independent of global market trends, and if these are unfavourable, it can only be maintained in the long term at the cost of significant (extra) budgetary expenditure.

7. Conclusions

While from the mid-1980s onwards, the European Union's policy and regulatory measures clearly aimed to extend internal market and competition rules to these areas, this process reversed at the end of the 1990s, and, since then, there is a trend of strengthening of Member States' competences. The crises of the past two decades, i.e. the 2008 economic and financial crisis, the Covid-19 pandemic and the energy crisis generated by Russia's aggression against Ukraine, have further stimulated this process. At the same time, this has also created an opportunity for some Member States to adopt rules that, while formally lawful, are contrary to the fundamental economic objectives of the Union in terms of their purpose and effect, in line with their own economic, social or political priorities. Hungary's policy of reducing utility costs, and its regulatory and communication framework, are particularly good examples of this phenomenon.

At the same time, the EU's response to the recent crises has also led to an expansion of the Union's 'toolbox' of enforcement measures, namely through financial incentives (the conditions attached to the aforementioned post-crisis recovery funds). Another novelty is the linking of financial incentives to the monitoring of Member States' compliance with their obligations under the rule of law through the so-called conditionality mechanism. The functioning of these new instruments can clearly be linked to the issue of the accessibility and quality of public services. The question is whether they work. Based on experience to date, it would be premature to assess this, but one source of danger is already apparent: merely fulfilling the conditions for the disbursement of EU funds on a purely formal, "on paper" basis, which is often difficult to distinguish from actual compliance at the level of EU control, will not solve the underlying problems.

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