

Legal Issues of Services of General Interest

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Markus Krajewski

Ulla Neergaard

Erika Szyszczak

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Caroline Wehlander

Services of General Economic Interest as a Constitutional Concept of EU Law



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Series Information

The aim of the series *Legal Issues of Services of General Interest* is to sketch the framework for services of general interest in the EU and to explore the issues raised by developments related to these services. The Series encompasses, inter alia, analyses of EU internal market, competition law, legislation (such as the Services Directive), international economic law and national (economic) law from a comparative perspective. Sector-specific approaches will also be covered (health, social services). In essence, the present Series addresses the emergence of a European Social Model and will therefore raise issues of fundamental and theoretical interest in Europe and the global economy.

Series Editors

Ulla Neergaard
Faculty of Law
University of Copenhagen
Studiestræde 6
1455 Copenhagen K
Denmark
e-mail: ulla.neergaard@jur.ku.dk

Johan Willem van de Gronden
Faculty of Law
Radboud University
Comeniuslaan 4
6525 HP Nijmegen
The Netherlands
e-mail: j.vandeGronden@jur.ru.nl

Erika Szyszczak
Sussex Law School
University of Sussex
Brighton, BN1 9SP
UK
e-mail: E.Szyszcak@sussex.ac.uk

Markus Krajewski
Fachbereich Rechtswissenschaft
Universität Erlangen-Nürnberg
Schillerstraße 1
91054 Erlangen
Germany
e-mail: markus.krajewski@fau.de

Preface

During the years 2004–2010, I worked as a practitioner of Swedish public law on housing and waste treatment; this book was born out of that experience. As a legal advisor for local and regional authorities in Sweden, I faced the challenge of understanding what a service of general economic interest (SGEI) is and how the SGEI character of an activity affects the application of EU market rules to national measures affecting the activity. I was also able to witness the striking contrast between the intensity of the EU debate on services of general interest at an EU level and the loud silence on this topic in Sweden. Yet it was clear that in Sweden as anywhere else in the EU, market law implacably made its way into the Member States' regulation of social services, one of the most sensitive parts of national democracy. It was also clear that this evolution could explain the introduction of several new provisions on SGEI in the EU Treaties, first through the Treaty of Amsterdam 1997–1999 and a decade later through the Treaty of Lisbon 2007–2009.

This transformation of SGEI into a constitutional concept of EU law is the result of a political compromise and, unsurprisingly, the post-Lisbon Treaty framework on SGEI has not only brought up new legal issues but also left crucial legal questions unanswered. This book addresses some of the unsolved questions: in particular, what constitutes an economic activity for the purpose of EU market law and what is the legal meaning of the EU concept of SGEI? The debate on SGEI may not be particularly topical at the moment but it seems important to discuss the meaning and relevance of SGEI, especially because the EU Commission has a mandate to negotiate the international trade agreement between the Union and the USA. The book also proposes an analysis of the ambiguous relationship between the SGEI provisions in the FEU Treaty, as interpreted by the CJEU, and the EU procurement and state aid legislative package adopted within the frame of the Commission Communication on Services of General Interest 2012. Finally, in order to gain a better understanding of the strategic choices made in these legislative packages, the book focuses on the Swedish regulation of public social services in systems of choice and on the effects a strict application of the EU state aid rules would have on their liberalization.

The book would never have existed without enduring attention from Pr. Tom Madell and Pr. Ulla Neergaard, and precious guidance from Pr. Jörgen Hettne, Pr. Johan Lindholm, Pr. Gareth Davies, Pr. Johan van de Gronden and Pr. Erika Szyszczak. The cheering team was composed of Per Wehlander, my beloved husband, and my children, César and Lila. They have amply proved that they know what solidarity means.

Lucky and grateful.

Stockholm,
January 2016

Caroline Wehlander

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Abbreviations

AC	Swedish Competition Act (Sw: <i>Konkurrenslagen</i> (2008:579))
AG	Advocate General
CJEU	Court of Justice of the European Union
EAGCP	Economic Advisory Group for Competition Policy
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EFTA	European Free Trade Association
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union
FAQ	Frequently Asked Question
GC	General Court (of the EU), formerly Court of First Instance
IG	The Instrument of Government (Regeringsformen 1974:152), one of the four fundamental laws comprised in the Swedish Constitution
LGA	Swedish Local Government Act (Sw: <i>Kommunallagen</i> (1991:900))
LOV	Act on Systems of Choice in the Public Sector (Sw: <i>Lag om Valfrihetssystem</i> (2008:962))
LRA	Local and Regional Authorities in Sweden
NESGI	Non-Economic Services of General Interest
Nyr	Not yet reported
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
PISA	Programme for International Student Assessment
PSO	Public Service Obligation
SALAR	Swedish Association of Local Authorities and Regions
SCA	Swedish Competition Authority
SEA	Single European Act
SGEI	Services of General Economic Interest
SGI	Services of General Interest
SPC	Social Protection Committee

SSGI	Social Services of General Interest
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
USO	Universal Service Obligation