

Legal Issues of Services of General Interest

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Andrea Gideon

Higher Education Institutions in the EU: Between Competition and Public Service



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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.

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*This work is dedicated to my grandfather,
Viktor Albert Benedikt Walther Titius, who
always encouraged me very strongly in the
pursuit of my academic career.*

Preface

This book is based on my Ph.D. project ‘European Higher Education Institutions under EU Law Constraints—An interdisciplinary analysis of the position of European higher education institutions between directly applicable EU law and their public service mission’. It has been revised and developed further and contains additional new research. I started the project as I craved an academic challenge after having worked outside of academia in Indonesia for a year. At the time of thinking about a research project, a new field of research was emerging: the tensions between the economic and the social in EU law and policy. When I began the research project, I discovered my passion for competition law, a field in which I now feel firmly anchored and in which I am currently researching new exciting topics with a focus on ASEAN. Without the Ph.D. project, I would never have discovered this interest. Since the Ph.D. new developments have taken place within the topics investigated in this book. In particular, the recent developments in UK higher education policy and the adoption of the new Research Framework and General Block Exemption Regulation make the book timely and I hope to be able to make a modest contribution to the relevant debates.

Along the way, there were many people without whom this journey would have never been possible and to whom I would like to express my gratitude. First and foremost I would like to thank my primary Ph.D. supervisor Prof. Dagmar Schiek, who not only provided invaluable feedback and encouragement for my Ph.D., but was also a supportive superior in my work for various research projects and as a teaching assistant for EU law. Even beyond this, she has always been an approachable mentor for any other questions I have had concerning my academic career and progress and I would not be where I am without her.

I would also like to thank my second supervisor Ann Blair for her insights and comments on my work, especially for the interesting discussions about the English higher education system. Professor Susanne Karstedt has very kindly advised me on the empirical part of my work. I am very grateful to all of them.

I would like to thank the School of Law of the University of Leeds for funding my tuition fees with the William Harrison Scholarship and providing travel

assistance for presenting my work at conferences. Furthermore, I would like to sincerely thank the interviewees and their universities for the time and invaluable information the interviewees have given me.

I am also very grateful to my examiners of the Ph.D. project Prof. Michael Dougan and Prof. Michael Cardwell for their feedback and the collegial atmosphere during the viva (even if it was interrupted by a fire alarm). Michael Cardwell has also subsequently been a very keen supporter of my work and suggested the Ph.D. thesis as the University of Leeds contribution for the Jean Blondel Ph.D. prize for which it indeed has been subsequently submitted and shortlisted among the top five theses. I have to thank him and Prof. Alastair Mullis for making this possible.

When it comes to turning the Ph.D. thesis into a book, I have to express my deepest gratitude to Prof. Erika Szyszczak. Not only has she suggested publication in the series, but also stayed with the project. During the process of rewriting of the Ph.D. as a monograph, she has been a very helpful, encouraging and, especially, patient editor. I am sincerely grateful for all her support. I would, of course, also like to thank the other editors of the series (Prof. Johan Willem van de Gronden, Prof. Markus Krajewski and Prof. Ulla Neergaard) for accepting the book as part of the series.

Furthermore, I would like to thank Dr. Albert Sanchez-Graells for his thorough and extremely helpful feedback on the initial draft and for his general encouragement. Useful feedback has also been given by Dr. Mike Gordon and by the members of the ECPR Standing Group on Politics of Higher Education, Research and Innovation (formerly the European Research Area Collaborative Research Network) at various conferences where I have presented parts of this work.

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Singapore

Andrea Gideon

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Abbreviations

ABA	American Bar Association
Abs.	Absatz (German for paragraph)
AiF	Arbeitsgemeinschaft industrieller Forschungsgemeinschaften (Industrial Research Associations)
BBC	British Broadcasting Corporation
BEIS	Department for Business, Energy and Industrial Strategy (new UK department)
BERs	Block exemptions regulations
BGH	Bundesgerichtshof (German Federal Court)
BIS	Department for Business, Innovation and Skills (previous name of UK government department)
BMBF	Bundesministerium für Bildung und Forschung (Federal Ministry of Education and Research)
BV	Besloten vennootschap (private limited liability company in the Netherlands)
BVerfGE	Bundesverfassungsgerichtsentscheidung (decision of the German constitutional court)
CE	Common Era
CESifo	Umbrella organisation of the ‘Center for Economic Studies’ and ‘Information und Forschung’
Charter	Charter of Fundamental Rights of the European Union
CHEPS	Center for Higher Education Policy Studies, University of Twente
CHERPA	Consortium for Higher Education and Research Performance Assessment
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority (UK)
C.M.L. Rev.	Common Market Law Review
COM	Commission
CöV Heft	Rechnungswesen und Controlling in der öffentlichen Verwaltung (Publication on controlling in public administration)
CUP	Cambridge University Press

DFG	Deutsche Forschungsgemeinschaft (German Research Foundation)
DG	Directorate General (of the European Commission)
EACEA	Education, Audiovisual and Culture Executive Agency
EC	European Community
ECI	European Citizen Initiative
ECJ	European Court of Justice (previous name and abbreviation of the CJEU)
ECTS	European Credit Transfer System
ed/eds	Editor/s
edn	Edition
EEC	European Economic Community
e.g.	Exempli gratia (for example)
EHEA	European Higher Education Area
EIoP	European Integration online Papers
ELJ	European Law Journal
ERA	Education Reform Act 1988
EStAL	European State Aid Law Quarterly
Et al.	Et alii (and others)
Etc.	Et cetera (and so forth)
ETSGIs	Education and training services of general interest
EU	European Union
EUA	European University Association
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (academic journal)
EZ	Ministerie van Economische Zaken (Ministry of Economic Affairs, the Netherlands)
fEC	Full Economic Costing (English full costing methodology)
FHEA	Further and Higher Education Act 1992 (UK)
FQS	Forum: Qualitative Social Research
fte	Full-time equivalent
GBER	General block exemption regulation
GDP	Gross Domestic Product
GERD	Gross domestic expenditure on R&D
GG	Grundgesetz (German Constitution)
GRUR	Gewerblicher Rechtsschutz und Urheberrecht (journal)
HE	Higher education
HEFCE	Higher Education Funding Council for England
HEIF	Higher Education Innovation Fund
HEIs	Higher Education Institutions
HMRC	Her Majesty's Revenue and Customs
HRG	Hochschulrahmengesetz (Framework Act for Higher Education)
HSGIs	Health services of general interest
i.e.	Id est (that is)
Ibid	Ibidem (at the same place)
IJELP	International Journal for Education Law and Policy
IP/R	Intellectual property/rights

JCMS	Journal of Common Market Studies
JGIM	Journal of General Internal Medicine
KNAW	Koninklijke Nederlandse Akademie van Wetenschappen (Royal Netherlands Academy of Arts and Sciences)
KU Leuven	Katholieke Universiteit Leuven (Catholic University Leuven)
LSE	London School of Economics and Political Sciences
M	Million
MEP	Member of the European Parliament
MIT	Massachusetts Institute of Technology
n	Note
N8	Eight universities in the North of England
NCA's	National competition authorities
NHS	National Health Service (UK)
NMa	Nederlandse Mededingingsautoriteit (Netherlands Competition Authority)
No.	Number
NWO	Nederlandse Organisatie voor Wetenschappelijk Onderzoek (Netherlands Research Council)
OCW	Ministerie van Onderwijs, Cultuur en Wetenschap (Ministry for Education, Culture and Sciences)
OECD	Organisation for Economic Co-operation and Development
OFT	Office of Fair Trading (former UK Competition Authority)
OJ	Official Journal
OMC	Open Method of Coordination
Ors	Others
OUP	Oxford University Press
p/pp.	Page/s
PACEC	Public and Corporate Economic Consultants
para	Paragraph
Ph.D.	Doctor of Philosophy
PI	Principal investigator
PPPs	Public–private partnerships
QAA	Quality Assurance Agency (UK)
QR	Quality-related research funding
QS	Quacquarelli Symonds
R&D(&I)	Research and development (and innovation)
RCUK	Research Councils UK
REF	Research Excellence Framework
RIO	Research and Innovation Observatory
RVO	Rijksdienst voor Ondernemend Nederland (Netherlands Enterprise Agency)
s	Section
seq	Sequentes (following)
SGEIs	Services of general economic interest
SGIs	Services of general interest
SMEs	Small and medium sized enterprises

SNIP	Small but significant and non-transitory increase in price
SSGIs	Social services of general interest
SSRN	Social Science Research Network
STEM	Science, technology, engineering and maths
STW	Stichting voor de Technische Wetenschappen (Technology Foundation)
TEF	Teaching Excellence Framework
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
THE	Times Higher Education
TKI	Topconsortia voor Kennis en Innovatie (Top Consortia for Knowledge and Innovation)
TRAC	Transparent Approach to Costing
TUD	Technische Universiteit Delft
UCAS	Universities and Colleges Admission Service
UCU	University and College Union
UIFZ	Universitäts-Industrie-Forschungs-Zentren (University-industry research centres)
UK	United Kingdom
UKRI	United Kingdom Research and Innovation
US/USA	United States (of America)
UUK	Universities UK
UvA	Universiteit van Amsterdam
VAT	Value added tax
VSNU	Vereniging van universiteiten (Association of universities in the Netherlands)
VVDstRL	Veröffentlichungen der Vereinigung der Deutschen Staatsrechtler (publication series)
WHW	Wet op het hoger onderwijs en wetenschappelijk onderzoek (Higher Education and Research Act)

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