

# **Legal Issues of Services of General Interest**

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Luigi F. Pedreschi

# Public Services in EU Trade and Investment Agreements



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Legal Issues of Services of General Interest

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## Series Information

Services of general interest have been high on the political agenda in Europe in recent years as a result of EU liberalisation measures and the case law of the European Courts. At the heart of the debate is the question of how to balance market economies with the pursuit of public policy. Of crucial concern are questions on the role of services of general interest and other public policies essential in modern society.

The aim of the series is to sketch the framework for regulating markets and public interests in Europe and to explore the legal issues raised by developments related to services of general interest and other public policies. The series encompasses, inter alia, analyses of EU internal market and competition law, as well as EU legislation impacting particular public policies, international and domestic law, often from a comparative perspective. Sector-specific approaches will be covered as well (for instance, health, social services, energy, education, environment, and communication). Furthermore, the present series also addresses the emergence of a European Social Union and will therefore raise issues of fundamental and theoretical interest in Europe and the global economy.

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# Preface

During the years 2015–2019, I was a doctoral researcher at the Department of Law of the European University Institute (EUI). This book is the product of that experience. My interest in the relationship between EU law and public services stems from my time as a postgraduate law student at the University of Edinburgh. Like most, I considered this relationship an internal issue, concerning primarily the rules of the single market and their impact on public services. While drafting my application for the EUI, I frequently came across news articles claiming that new EU trade and investment agreements, specifically TTIP and CETA, would threaten public services. It struck me that there was also an external dimension to the relationship between EU law and public services. This book examines the external dimension of this relationship together with its effect on the internal dimension. The relevance of this subject endures as the possible impact of EU trade and investment agreements on public services continues to receive widespread attention from both civil society and academia.

Against the backdrop of a growing body of legal scholarship, the overarching question of this book is whether public services are treated as they *should* be in EU trade and investment agreements. This raises several sub-questions: how international trade and investment rules affect public services; what obligation the EU has to public services; does this extend to its international agreements; and, if so, do its external agreements satisfy this obligation. The book examines the rules and disciplines of a broad range of EU agreements as well as their impact on the organisation and provision of public services. Three main arguments are advanced. First, the extent to which international trade and investment rules impact public services depends on two factors: the model of trade and/or investment and the public service system with which that model interacts. Second, public services are a shared value of the Union that should help shape its trade and investment policy. In this regard, the book claims the external treatment of public services should cohere with the equivalent internal treatment of public services. Third, in its agreements, the EU tailors international trade and investment law in a fashion that seeks to accommodate its obligation to public services.

This book has benefitted greatly from the support and guidance of others. Most important has been the role of my doctoral supervisor, Marise Cremona. Her blend of gentle reassurance, thoughtful analysis, challenging questioning, and timeous feedback has been invaluable. I would also like to thank the members of my jury, Joanne Scott, Piet Eeckhout, and Markus Krajewski. Their considered feedback on the initial version of my doctoral thesis has proved invaluable. During my doctoral research, I spent a semester at the New York University's School of Law where I had the pleasure of learning from Jose Alvarez, Gráinne De Búrca, Rob Howse, and Joseph Weiler. Throughout the drafting process, my family has been ever-present: Mum (Theresa), Dad (Remo), Renzo, and Lara, thank you for all your help and support. Last but not least, my greatest thanks go to my cherished companion, Giuliana, and newly born daughter, Frida, for their love and affection.

Florence, Italy  
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Luigi F. Pedreschi

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# Abbreviations

AA	Association Agreement
BIT	Bilateral Investment Treaty
CCP	Common Commercial Policy
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
DSB	Dispute Settlement Body of the WTO
DSM	Dispute settlement mechanism
ECHR	European Convention on Human Rights
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EEA	Agreement on the European Economic Area
EPA	Economic Partnership Agreement
EU	European Union
FET	Fair and equitable treatment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICSID	International Centre for Settlement of Investment Disputes
ISDS	Investor-state dispute settlement
MFN	Most-favored-nation
NAFTA	North American Free Trade Agreement
NHS	National Health Service of the United Kingdom of Great Britain
PCA	Permanent Court of Arbitration
SCC	Stockholm Chamber of Commerce
SGEI	Services of general economic interest
TEC	Treaty establishing the European Economic Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TPP	Trans-Pacific Partnership Agreement
TTIP	Transatlantic Trade and Investment Partnership

UNCITRAL	United Nations Commission on International Trade Law
USMCA	United States–Mexico–Canada Agreement
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
WTO	World Trade Organization