

Sub-project: Services of General Interest in the EU

Active researcher: Associate professor Ulla Neergaard

1. Presentation of the Problem

The *subject* of this project is services of general interest in the EU (hereinafter SGI). It is related to the main project as it may be claimed that in the classic model of the Nordic welfare state traditionally SGI have played an essential role. However, as part of the process towards a European market state, waves of liberalisation and privatisation are in these years changing the traditional way of setting up these services. The pressure on the traditional set-up and provision of these services originate, among others, from EU-competition law including state aid, and the internal market law. It has for a long time been evident to those working intensely with EU law that the potential reach of these rules is extremely powerful.

The *importance* of these services is apparently accepted by the Commission, which has expressed: “In a world of change, services of general interest remain an essential building block of the European model of society. European citizens and businesses have come to expect the availability of a wide spectrum of high-quality services of general interest at affordable prices. These services contribute to the quality of life of citizens and are a prerequisite for fully enjoying many of their fundamental rights. Access to services of general interest by all their members is one of the common values shared by all European societies. Services of general interest contribute to the competitiveness of European industry and strengthen the social and territorial cohesion in the European Union.”¹

The primary legal basis for protection of the Member States’ interests in this regard is to be found in *Article 86(2) EC*. It is not until very recently that academics and ECJ have begun to pay attention to the provision. It is an not easily interpreted provision. It may quite interestingly be seen as supplemented by *Article 16 EC* (previously Article 7D). Even in the Charter of Fundamental Rights, a certain degree of protection is to be found, *i.e.* in *Article 36*.

The *objective* here is to clarify whether especially the mentioned provisions are only more or less political declarations or whether the Member States actually may find the protection needed to uphold the desired level of SGI, as well as whether any changes over time have occurred in order to estimate what the future might bring in this regard.

On this background the *research question* to be answered is the following:

¹ Commission of the European Communities, *Report to the Laeken European Council. Services of General Interest*, Bruxelles, 17 Oktober 2001, COM(2001)598, 3.

An analysis of primarily Article 86(2) EC, Article 16 EC, and 36 of the Charter on Fundamental Rights, based first and foremost on the decisions of the European Court of Justice, in order to register the changes over time and the more exact degree of protection of services of general interest - including a focus on whether the economic concerns are prioritized as to the social concerns - as well as to suggest recommendations as to an improved state of law.

It is related to both of the research questions defined in the main project. Interest is put on the substantial legal principles and not so much on specific secondary law concerning very sector-specific issues. The focus on whether economic concerns are prioritized as to social concerns has the purpose of investigating to which degree market values are given priority over non-market considerations.

The suggestions for improvement will be limited to recommendations regarding legal principles such as legal clarity and certainty, and will not touch upon the formulation of what the more general political ambitions in this area ought to be.

The *relevance* of the project follows already from the fact that the Member States have felt the urge of stating the importance of protecting their interest in the supply of SGI in the EC Treaty itself but also even in the Charter of Fundamental Rights which actually bring these services a constitutional status. The issues at stake may in actual fact be seen as a matter of distribution of competences. The project will in other words evaluate whether the Member States' competences in this respect are being undermined or not. One could for instance ask to what extent Member States can continue to organise certain types of economic activities, including the provision of collective goods, along non-market lines, thereby excluding implicitly operators from other Member States; or to what extent Member States remain competent to manage or direct certain sectors of their economy, for example by reserving certain activities to publicly-owned or controlled companies.²

2. Theory and Method

The project will use the theory and method outlined in the main project description.

(4768 keystrokes)

² Also see Hancher, L., "Community, State, and Market", in *The Evolution of EU Law*, Ed. by Craig, P. & de Búrca, G. (Oxford University Press, 1999) 722.