



Services of General Interest: Glossary and Terms Explained

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1. INTRODUCTION

Part of the problem with the “Services” debate arises because of misunderstandings over terms and concepts. These terms often change their meaning in translation, but also reflect the very different historical, cultural and political traditions about the role of the state in promoting the welfare of its citizens and well as the challenges raised by EU legal language. In this paper we provide a brief explanation of the main terms used so as to help EAPN members to *understand and engage better* with the current debate on Services of General Interest and Social Services.

2. SERVICES OF GENERAL INTEREST (SGI)

What are they?

Services of General Interest (SGI) refers to *basic services* which are *essential* to the lives of the majority of the general public and where the state has an obligation to ensure public standards (*to defend the public interest*). SGIs cover a broad range of activities linked to the big network industries like energy, telecommunications, transport and postal services, but also include vital services which form the heart of EU social protection systems: like education, health, housing, social and services, water and waste management.

EU Context

Although the term Services of General Interest is not found in the EC Treaty, they have seen to reflect “*core values*” of the European Model of Society. They are an expression of fundamental rights and play a vital role in ensuring social and territorial cohesion throughout the EU. The state has a legally defined role (at whatever level: national, regional or local) to decide which services fall under the “*general interest*” and to impose *public service obligations* on the delivery of these services. This means taking responsibility to ensure that all citizens are guaranteed equal and affordable access. All SGIs are required to provide: accessibility for all, affordability, continuity, information and transparency, participation of users in the definition and evaluation of services and respect for labour standards. Public authorities can decide whether to carry out the services

themselves or to entrust their delivery to other bodies – either public or private, profit or non-profit making. All service providers, however, have to respect EU laws and the EU has a responsibility to frame the principles and conditions.

Key Articles

- **Article 16** of the Treaty establishing the European Community recognizes the services of general economic interest (SGEI) as a “*shared value of the Union*” and indicates that the Union and the member states “*shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.*” (see section on new Protocol on SGI)
- **Article 86 (2)**¹ confirms that SGEI are subject to competition rules, but states that these rules should not prevent the services from delivering their objectives. This appears to support the view that where there is a conflict of interest, competition law should be secondary to the public interest i.e. that the mission and objectives of these services is more important.

Public Services

In some countries, the term “*public services*” is used to describe these services. Although this is easier to understand, as the term covers the main services that have traditionally been provided as part of the welfare state, it is now rather a misleading term. This is because in the majority of member states the state is no longer the *sole provider* of these services. The public authority can choose to *deliver* the services through a variety of different *providers*: public, private, NGO’s or third sector, or a mixture (public/private partnerships). The debate over “*services of general interest*” arises precisely because of the tension over how far the market involvement in the provision of basic services through the private sector (*privatization and liberalization*), needs to be ‘*regulated and controlled*’ to ensure that the “public interest” is guaranteed, rather than ruled by the drive for profit.

¹ Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)

The term «*services of general economic interest*» is quoted in the Treaty (Articles 16 and 86(2)), although no clear definition is given. It refers to services of an “*economic nature*” which the Member States subject to specific “*public service obligations*” by virtue of a *general interest* criterion.² **What this means in practice is basic essential services (Services of General Interest) which the states consider necessary to regulate to ensure adequate delivery.**

Services of general economic interest (SGEIs) are different from ordinary services in that public authorities consider that they need to be provided even where the market is not sufficiently profitable for the supply of such services. The concept of services of general interest is based on the concern to ensure that a quality service is provided at an affordable price everywhere for everyone. Services of general interest contribute to achieving the objectives of solidarity and equality of treatment underlying the European model of society
<http://europa.eu/scadplus/leg/en/lvb/l26087.htm>

The classic SGEIs are the big network services like electricity, gas, telecommunications but the term can also cover any other “*economic activity*” which is regulated by the state, i.e. subject to government regulation or public service obligations.

Although it is easier to understand this term as *essential services run by the private sector*, case law in the European Court of Justice has shown that services delivered by NGO and third sector organizations can also be considered to be “*economic*” if they provide a “*remuneration*” i.e. hire/pay qualified staff etc or are considered to be “*economically productive*” in a market context i.e. providing work experience or training for unemployed people. More confusingly, as you can see from the above examples, the same NGO can be seen as providing both “*economic and non-economic services of general interest*”, depending on whether their activities are considered to be economic in nature (i.e. there is considered to be “*a market*” for the particular service in question).

² 41 These definitions are based on the definitions used in the Green Paper on services of general interest, COM(2003)270, 21.5.2004

The difference between SGI and SGEI

For most of us, the distinction between **SGI and SGEI**, is difficult to understand, particularly as often what is defined as an SGI today, can become a SGEI tomorrow, or may be a SGEI already in another member state.

Example: Security is currently quoted as a classic *Service of General Interest* as it is seen as representing the very essence of the fundamental role and duty of government's public interest duties. However, as there is now deemed to be a market for these services and some countries following the US model are delivering prison services through private companies (UK), these services are increasingly being classified as *Services of General Economic Interest*.

The decision over whether a *Service of General Interest is economic or not* is finally decided through the European Court of Justice on a case by case basis,. The Court looks at the nature of the activity, assesses the existence of a market and other economic criteria. To most of us, however, this decision appears to rest less on the *intrinsic qualities* of the service itself (being economic or social per se) than whether there is a market for these services i.e. (whether the private sector sees it as a viable area to make profits) and whether governments decide to facilitate private sector involvement in this area of service delivery..

The *importance* of the distinction is because services of general interest which are seen as economic SGEI are subject to **EU competition** and **internal market rules** and to the obligations to the freedom to provide services and freedom of establishment i.e. they are obliged to provide fair competition, enable companies from other member states to apply, and not to use public sector subsidy to distort the market.

The Protocol to the Reform Treaty (2007)

The new Protocol 9 agreed in Lisbon in October 2007, clarifies somewhat the principles and values underpinning EU policies and emphasizes the shared values in regard to SGEI, within the meaning of Article 16 of the Treaty (the new Article 14) Each member state is left free to decide whether a

services is SGI or SGEI and how they wish to finance and deliver these services and through what providers (public, private or third sector)

Article 1

- *The essential role and the wide discretion of national regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users.*
- *The diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations.*
- *A high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.*

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organize non-economic services of general interest.

This is the first time that a legal text with such weight as the Treaty deals specifically with SGI. providing arguments in favour of the essential role and of certain important principles with regard to SGEI.

Article 16 is now amended to become **Article 14** of the new Reform Treaty. The new wording explicitly transfers to the Union and its member states the requirement to ensure the economic and financial conditions to allow the SGEI to complete their missions. In addition, a new sentence is added that states that *“the European Parliament and the Council acting by means of regulations (...) shall establish these principles and set these conditions without prejudice to the competence of Member States (...) to provide, to commission and to fund such services..”*

These amendments are positive and giving the EU legal competence to regulate the well-functioning of SGEI.

5. SOCIAL SERVICES OF GENERAL INTEREST

Logically, if there is no definition of SGI, there cannot be a clear definition of Social Services of General Interest. It is currently agreed that member states are responsible for defining the obligations and missions of these services and how/who carries them out. They are generally understood to **be essential basic services which are provided in the public interest, but which are essentially “social” in character, and are often linked to national social welfare and social protection rights and arrangements.** The Commission in the 2006 Communication identified two broad types of social services: firstly, statutory social security schemes linked to main life risks (e.g. ageing, health, unemployment, retirement, disability.) and personal services such as social assistance, employment and training services, social housing, long-term care, which depend on an individual relationship between the provider and user, and are often targeted at vulnerable groups.

Social Services of General Economic Interest

Social Services are considered to be of general economic interest when they are supplied in a “market context”, regardless of their legal status or the way they are financed. However, the European Court has ruled that all services which are paid for should be considered economic activities, even if the service is not paid for by those benefiting from it. This means that **most personal social services could be considered to be “economic”** within the meaning of the Articles 43 and 49 of the Treaty, making them liable to competition law and state aids requirements. This means that they are expected to enable fair competition and not use public aid “to distort the market”.

Example:

- State social security schemes are considered to be a prime example of a **social service of general interest** which is not considered to be economic. They form part of the State’s obligations for social protection and no market exists.
- A **voluntary counselling service** for migrants, could be considered an economic or non-economic social service. If the volunteers are not paid and no market exists, they would be

considered an SSGI. However, if the same service receives a subsidy to provide the service, enabling payment of costs of the services, including remuneration of some kind, this would be likely to be considered economic. (SSGEI)

State Aids

One of the main reasons why the distinction between SSGI and SSGEI matters is because only SGEI fall under the EU Regulations on state aids – where the EU interferes to stop public subsidy “distorting the market”. However, the decisions made recently by the European Court of Justice on State Aids – particularly the Altmark³ decision in July 2003 and the EU’s decision on a SGEI Aid block exemption⁴ in December 2005 should have made the situation easier for most NGO social service providers. Particularly the block exemption for SGEI decision – where social housing and hospitals are excluded from State Aid regulations if they are SGEI, or where they are small operations with limited turnover

However, State aids is a very complicated area, and NGO social service providers will normally get legal advice, should they be challenged over public subsidy and state aid rules.

See also the new Commission Staff Working Documents produced as part of the Internal Market Review relating to services of general interest

http://ec.europa.eu/citizens_agenda/index_en.htm and frequently asked questions on state aids (http://ec.europa.eu/services_general_interest/docs/sec_2007_1516_en.pdf) and public procurement (http://ec.europa.eu/services_general_interest/docs/sec_2007_1514_en.pdf).

For more information/ or to feedback comments/examples – contact Sian Jones at EAPN on Sian.jones@eapn.eu or Vincent.caron@eapn.eu

³ The Altmark Decision – lays down four conditions which must be met if a service is to escape from the state aid regulations:

- 1) the beneficiary must be entrusted with a clearly defined public service mission
- 2) The parameters for calculating the compensation payments must be established in advance in an objective and transparent manner.
- 3) Compensation must not exceed the cost incurred, with some allowance for reasonable profit.
- 4) The beneficiary must be chosen in public tender or benchmarked against a well-run service.

⁴ The SGEI block exemption excludes hospitals and social housing as well as other services with smaller turnover from State Aid regulation eg with annual compensation of less than 30 million Euros, and annual turnover of less than 100 million Euros