Services of General Interest and Territorial Cohesion

European Perspectives and National Insights

With 23 figures

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Preface

The access to Services of General Interest (SGIs) is a highly relevant factor for territorial cohesion, and the prosperity of regions, cities and their citizens in terms of growth, jobs and good living conditions. Currently, however, some regions, cities and towns are experiencing a shrinking or even declining population. This is in some places accompanied by or even influenced by the decrease in service provision. But it is also important to note, that this is not the situation all over Europe.

The development of small and medium sized towns (5–50,000 inhabitants) and very small towns (less than 5,000 inhabitants) is currently subject to particular political attention. The same can be said for more rural territories (so-called ‘inner areas’) with poor access to basic services (education, health, etc.).

These issues have been taken up by the current trio of EU Presidency countries, Italy, Latvia and Luxembourg, as almost all European countries are affected by these development trends. Standards of Services of General Interest in urban, periurban or rural areas are expected to become a point for discussion. In parallel, the harvesting of endogenous development potentials in these territories will be a key issue in support of their economic viability and in improving the service provision where needed.

In the current discussion of challenges with the provision of Services of General Interest the focus is on three important factors: (1) the size of the place in terms of population, (2) the functionality and economic base of the place, and (3) the proximity to larger places with better provision of services. However, it is clear that the issue remains complex. Moreover, actual service provision in a place is often influenced by decisions on many levels, and made by public and private actors.

In order to provide territorial evidence on this complexity, it is important to improve the knowledge and understanding of the challenges faced by different territories and to offer facts and inspiration to policymakers, practitioners and administrators. This evidence can support necessary policy development, im-
plementation, monitoring and evaluation related to Services of General Interest throughout Europe depending on the territorial context.

Contributing with European territorial evidence to this policy demand, the ESPON 2013 Programme started the project “Indicators and Perspectives for Services of General Interest in Territorial Cohesion and Development” (SeGI) in 2010. The project resulted in territorial evidence, answering crucial questions for European regions including: “to what extent do the varying levels of Services of General Interest contribute to the competitiveness, economic development and job growth of different territories?”

Against this backdrop, ‘Services of General Interest and Territorial Cohesion – European perspectives and national insights’ presents some of the key messages from the SeGI project, and importantly also results from other research and studies to support the further political discussion of a balanced and cohesive European territory with an adequate provision of services in urban and rural communities.

The book offers a first-rate overview of key topics relating to Services of General Interest. The chapters provide a useful synthesis of previous research findings and evolving policy discussion. The book should be welcomed by policy makers, policy analysts, stakeholders, practitioners and scholars as an important input into the work related to Services of General Interest.

Peter Mehlbye
Director of the ESPON 2013 CU
Introduction
Introduction: Contextual, legal and policy perspectives on Services of General Interest

In this edited volume, we take a close look at the provision of those basic services that society vitally needs for its development and economy to function, focusing specifically on the European context and addressing many aspects and understanding of the matter. Referred to nationally used various expressions such as ‘public services’, ‘service public’, ‘Daseinsvorsorge’, and many more, the European Union also introduced a related, but nonetheless stand alone, concept: Services of General Interest.

1. On the terminology of SGI

The term ‘Services of General Interest’ (SGI) is in practice not found in the policy vocabulary of any EU Member State, nor is it the subject of general public discussion. It has, however, been at the core of the European integration process since its inception in the Treatise of Rome 1957 (EEC, 1957) and remains the subject of vigorous debate, particularly in EU-related legal and political science circles. While concerns with ‘social erosion’ were only recognised much later, the first driving force behind integration was the creation of the European single market. The main concern here was the need to create the optimum market conditions – of production and exchange – for a competitive European trade environment to emerge. Rules were required to improve standards, increase efficiency and maintain fairness and were expressed in the form of the creation of greater predictability for business through the ‘harmonisation’ of state practices across market participants. As such, the EU sought either to directly improve the inputs to the production process – i.e. through the promotion of equal pay for men and women – or by engaging in ‘environmental support’ – raising efficiencies in terms of creating better transport/communications/infrastructure, etc.

The language of SGI reflects the term’s specific EU heritage; even though the issues addressed touch on the central question of the role played by the public...
authorities in a market economy, such as ensuring a level playing field, rule compliance, the safeguarding of the general interest, and the preservation of public goods where market-based provision fails. Despite the EU’s obvious desire to ‘push the boundaries’ in this general area – the various directives and ECJ case law – it remains primarily for the relevant national, regional and local authorities to define, organise, finance and monitor SGI.

There is a genuine debate around the ‘primacy’ of definition between formal, juridical on the one hand and applied, political views on the other. The EU concept of SGI can therefore be sub-divided and categorised into two basically overlapping approaches: the legal-normative or the content-analytical perspective. In the legal-normative perspective, a differentiation – in terms of European competitiveness and single market regulations – between ‘economic’ and ‘non-economic’ interest matters, in the second, content-analytical perspective we speak of ‘Services of General Economic Interest’ – i.e. mainly network infrastructures – versus ‘Social Services of General Interest’ – i.e. welfare, education and healthcare services. In fact, a certain service may be an SSGI in analytical ways, but still open to European single market rules, so as well an ‘economic’ SGI.

Services are significantly influenced by changes in society and culture and evolve over time. For example, the ongoing trends of decentralisation and liberalisation influence the development of many sectors providing SGIs. Indeed, according to ESPON (2006) this complex situation presents a fundamental challenge to the aims of cohesion in terms of both policy formulation and implementation. These differences, combined with the historical and geographical specifics of the SGI concerned, are crucial to their organisational status and technological development, and therefore present distinct challenges when it comes to defining strict guidelines and comparable indicators.

Within this action framework, national level public authorities have retained considerable freedom to define and enforce public service obligations and to organise the provision of SGI. This allows EU Member States to define policies that take into account specific national, regional or local circumstances. For example, remote or sparsely populated areas may have to be treated differently from metropolitan or densely populated areas. There is, however, no coordinated European approach to SGI provision.

The promotion of universal access across all European regions concerns the right of individuals and businesses to access certain services viewed as essential and oblige service providers to offer defined services in accordance with specified conditions, including complete territorial coverage and, additionally, at an affordable price. Universal service access provides for a minimum set of rights and obligations, which as a general rule, can be further developed at the national level.
The Commission’s approach has traditionally rested on the twin pillars of harmonisation and mutual recognition; however, neither of these strategies comes without cost. As became increasingly clear in relation to the ‘Bolkestein draft’ of the Services Directive, the strength of any mutual recognition regime is severely tested when the level of socio-economic differences expands beyond a certain point while, as Majone (2009: 218) notes, in terms of regulatory harmonisation, “as long as resources and preferences are fairly similar across countries, the advantages of common rules are likely to exceed welfare losses caused by harmonisation, but when heterogeneity exceeds a certain threshold the reverse will be true”.

The Commission has generally promoted ‘controlled’ liberalisation, i.e. the gradual opening-up of the market accompanied by measures to protect the general interest, in particular through the concept of universal service (on both a subsidiarity and a regulatory basis depending on the sector) – to guarantee access for everyone whatever their economic, social or geographic situation – to a service of a specified quality at an affordable price. This has placed a particular focus on ensuring adequate standards for cross-border services that cannot be adequately regulated at the national level alone. As regards the long-term impact of the opening-up to competition of SGI, results of case study analyses in part II of this volume suggest that the impact of liberalisation on overall performance is still unclear, at least as far as affordability and the provision of universal service is concerned. Short-term problems can however be seen, in relation to the case study analyses, as regards some services in some countries.

2. Understanding the current debate on SGI

Due to the lack of clarity regarding terminology and definition, we propose a three-fold scheme for discussing Services of General Interest under different foci. Concretely, we see three factors that raise issues around SGI that are contextual, legal and political in nature:

(1) The contextual background for providing SGI lies within the changing economic and social development;
(2) The legal requirements, rules and regulations that target single market development as well as safeguarding consumers’ needs;
(3) The policies from EU and national levels that directly and indirectly relate to SGI provision.

The first point has a structural weight in SGI provision. Output-oriented, ageing societies need different composition of services, on the other hand, input-oriented, SGI standards depend on economic capacities. Further, globalisation
trends have distinct effects on comparatively fragile economies and social systems of Southern or Eastern EU countries compared to more robust Western and Northern economies and social systems.

The second point supports a relevant discussion explicitly within the EU context. Within EU primary law, service regulations in course of single market and competition policy do impact on also the national legislation relating to SGI. The European Court of Justice holds a strong position in operatively defining a service as SGI on a juridical basis.

Since the Lisbon Treaty, guiding documents from EU level about services of general interest have supported the idea that SGI are fundamental pieces to achieve social and territorial cohesion. The Services Directive (CEC, 2012) and other subsequent documents were fostered by the publishing of the Green Paper (CEC, 2003) and White Paper on SGI (CEC, 2004). More recently, in 2011, the Commission published new orientations synthesised in a document titled “A Quality Framework for Services of General Interest in Europe” (CEC, 2011). Furthermore, there is the Commission Handbook on Implementation of the Services Directive published in 2007. Despite not being legally binding, this document gave suggestions to Member States on the possible implementation of the Services Directive, helping in the harmonisation of substantive rules and regulation through negative obligations (Wiberg, 2014). By this, some scholars, such as Wiberg question the value of EU Services Directive, if there is more than law, if it is a policy, supported in the introduction of EU level orientations and governance instruments.

Thirdly, whilst the policy context is key for the organisation and provision of SGI, SGI play an important role in the achievement of major EU goals as articulated in the Lisbon Agenda of “becoming the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion” (Council of the European Union, 2000: para.27) and later the three growths goals – smart, sustainable, inclusive – of Europe 2020 (CEC, 2010).

SGI provision must be understood in this context and the lack of clarity regarding terminology and definition serves a political aim. While SGI and Services of General Economic Interest (SGEI) both have legally binding definitions, Social Services of General Interest (SSGI) has not. In fact, there is no treaty basis for SSGI and the Member States cannot agree on its boundaries (Bauby, 2013: 50–51; van de Gronden, 2011: 150–51). Still, the Commission of the European Union (CEU) has used SSGI in its attempt to shape the policy process, as ‘ambiguity’ ensures that outright opposition to the CEU’s preferred policy alternative is unlikely to be forthright and fundamental in nature (Bauby, 2011: 34–35). The result has been that “liberalisation has broken down or blurred
traditional boundaries of the state provision of goods and services in the social sector” (Neergaard et al., 2013: 8).

The Commission of the European Union considers SSGI as measures to address risk and vulnerabilities in life (CEC, 2007: 7–8), which facilitate social inclusion and the safeguarding of fundamental rights (CEC, 2010b: 16–17). While the Commission of the European Union define SSGI as a sub-category of SGI (CEC, 2010:15–17), this is not the case in EU law (van de Gronden, 2011: 125). In a legal sense, SGI can only be viewed as economic or non-economic services. No sub-category is recognised in the EU law. Further legal clarification is needed to make the concept SSGI work in reality (Neergaard, 2013: 241). When it comes to healthcare, the legal situation becomes unclear as the internal market objectives and objectives of healthcare standards have not been set (Baeten and Palm, 2013: 409–11). Some scholars have even argued that the EU Service Directive cannot be seen as a legally binding document, but rather a political document to facilitate harmonisation (Wiberg, 2014: 285).

A lack of clarity definitely exists regarding the definitions, scope and legal framework of SGI, SSGI and SGEI. Furthermore, the political definition of SGI, consisting of SGEI and SSGI, clashes with the legal definition as SGI as economic or non-economic. This inherit conflict is yet to be solved.¹

Notwithstanding this inherit conflict, the role and the growing importance of SGI of promoting social cohesion has become more central and afforded higher priority in political documents. The provision of SGI is sometimes very costly and in the current financial crisis the desired quality, accessibility and affordability of SGI could be impaired, not to mention future provision and maintenance. It is precisely in these situations that SGI are even more important, as public service is an essential support, or even the main support, for the poorest regions. The level of SGI is vital to reduce disparities, namely, by supporting rural settlements and maintaining an urban-rural balance. (Rauhut et al., 2013)

Key requirements for the effective implementation of SGI is a full understanding of the nature of provision on the EU Member State level, the ways in which the provision of SGI is territorially differentiated across the EU, the nature of Member State policy and action to secure the objectives for delivery of SGI, the evident gaps in the information base to support the implementation of SGI, and the means by which these gaps can be addressed. All of these issues form the key objectives in the various chapters of this edited volume.

This edited volume draws upon the results of an ESPON research project

¹ Humer (2014) has – alongside a multitude of EU documents and communications – discussed several services and their (dynamic) categorisation from legal and policy perspectives. In fact, one and the same potential SGI can be understood as either a SGEI or a SSGI in analytical sense as well as economic or non-economic in legal sense. However there is no ‘primacy’ over the conflicting approaches; it is more a disciplinary question.