

Dr. sc. Mirko Klarić, docent
Pravnog fakulteta Sveučilišta u Splitu

BASIC ASPECTS OF PUBLIC SERVICES IN LAW OF EUROPEAN UNION

UDK: 35. 08 (4)

Primljeno: 1. VII. 2009.

Pregledni znanstveni rad

Public services are very important part of public administration. These services are important for fulfill people's essential needs, and are vital to their well being. In EU law existing main division on two type's public services: commercial and non-commercial. First are so called services of general economic interest. Second are so called social services of general interest. In these work would be analysed basic legal aspects of this two type services in EU law, and relations between European Union and Member States for their regulation.

Key words: *public administration, public services, services of general economic interest, social services of general interest¹*

1. INTRODUCTION

Public services fulfill people's most important needs and are vital to their well being. The quality of citizen's lives depends on these services. They are essential for sustainable economic development every country in the world, and people welfare depend on their work.

Public services are also important for a social and regional cohesion in Europe. This is the reason why is the universal access to public services, regard to be a fundamental right, and a pillar of the European Social Model. In European Union public services are also known as a as services of general interest (SGIs) or services of general economic interest (SGEIs).

In European public opinion today exist opinion that EU need clear rules, to ensure continuity of supply and fair access for everyone who used public services (or in terminology of EU SGIs or SGEIs). Public services must be of the highest standard, accessible to everyone at an affordable price. They are also must be a subject to democratic control and accountability involving consumers and workers in these sectors.

Public authorities have a responsibility to ensure supply of the public services regardless of whether they are profitable in a free market. Although are difficult

¹ Work has written during study residence on Freie Universität in Berlin. Author thanks Professor Roggemann for advice and suggestions during the writing of work.

to define precisely what type of service is public service. We have variations between one Member State and another. They cover, for example, energy and water supply, waste management, telecommunication and postal deliveries, public transport, communal services, healthcare and social services, education and culture, etc.

The distinction between SGIs and SGEIs in European administrative terminology is complex, and is also subject to interpretation by the European Court of Justice, because any activity consisting in offering goods and services on a given market is an economic activity. So, it's hard to define precisely border between SGIs and SGEIs, and depend on opinion European Court of Justice in their judicial decision. Generally, SGIs could be defined as any services provided directly by public authorities, such as education, social services, etc, whereas SGEIs consider an economic relationship of some sort between supplier and consumer.

In the late 1980s, the Commission has pursued a policy of market-opening to create competition in different economic sectors such as transport, telecommunications, electricity and gas. Unfortunately, liberalization has had the effect of replacing single, public monopolies, with another type of monopolies, such as large group of private quasi-monopolies.

Liberalization and outsourcing have tended to reduce the accessibility and quality of public services, and has not always benefited consumers. Commission is, for example, adopted a series of measures to bring the progressive liberalization of postal services. It has just taken a further step towards total liberalization, opening these services up to free competition from 1 January 2009, without taking care to safeguard a universal service, accessible to all.²

Attended of this article is to analyze role and status of public services in legal order of European Union and its member states, and also future development of this very important part of modern society.

2. PUBLIC SERVICES AS SERVICES OF GENERAL INTEREST, OR SERVICES OF GENERAL ECONOMIC INTEREST

Like it said in introduction, in legal terminology the institution of European Union, public service are also known as a as Services of General Interest (SGIs) or Services of General Economic Interest (SGEIs). The different between these two types of public services, laying in fact those SGIs are noncommercial and SGEIs are commercial service. European Commission wants to establish the competition in the field of SGEIs, and make them equal with the other commercial services on the single European market.³

² See <http://www.etuc.org/a/3167>.

³ In the mean time, the European Commission, European Court of Justice, and the other European

In European Union there was never a common definition of what public services are. Member States still today continue to employ varied practical solutions of public services. For example, in France public service does not exist in itself, but only according to the will of authority, so any activity that authorities set up as such, would be considered as a public service. In Great Britain the same term would be often used as a term for civil service. The concept of public service obligations and public utilities in Britain law is little bit different. We have concept of public enterprise, which claimed that public ownership is the best means of controlling natural monopolies. So, this is a reason why should be managed for the public interest.⁴

It is the fact that public services occupy a certain niche in the European law. Their development had taken place through adoption of a basic term of “services of general economic interest” as used in article 86(2) of the Treaty. European Court of Justice and the European Commission have been reluctant to push forward any particular concept of public services. This was for the fear of opposition from Member States, which identified public services as identical with public sector and as a result, with the exercise of public authority.⁵

This new term, built in Treaty of establishing the European Community (TEC), added two essential values. first, Give more weight to SGEIs in the EU spectrum “*from derogation to obligation*”, and second, clearly state shared responsibility between the European Commission and member states, in sense that both share responsibility to take care about the good functioning of the SGEIs to perform their obligations in the interest of their users and beneficiaries, European citizens.⁶

The terms public sector and public services sometimes refer to the fact that a service is offered to the general public. Sometimes they highlight that a service has been assigned a specific role in the public interest, and sometimes refer to the ownership or status of the entity providing the service.

As a consequence of this confusion in the meanings, the terms public service and public sector have not been used by the Commission in its White Paper on Services of General Interest. Commission occasionally uses them to underline the relevance of the national contexts.⁷

Institution recognize a specific nature of SGEIs to normal life of citizen. They support specific form of regulation these services thru regulatory authorities.

⁴ See McGowan, F.: “*State Monopolies Liberalisation and the Consumer*”, in Geradin, D. (ed.): “*The Liberalisation of State Monopolies in the European Union and Beyond*”, Kluwer Law International 2000, p. 214. – 215.

⁵ See Schmidt, V.: “*Europeanization and the mechanics of economic policy adjustment.*” Journal of European Public Policy, Vol. 9, No. 6, 2002, pp. 894 – 912.

⁶ See Rodrigues S.: “*Towards a general EC framework instrument related to SGEIs? Political considerations and legal constraints*”, working paper from International Conference “*The changing framework of public service in Europe*”, Potsdam, 07. – 09. 04. 2008., p. 3.

⁷ Gromnicka, E.: “*Services of general economic interest – from application of competition rules to Europeanisation of public services.*” Paper presented at the Conference ‘The Treaty of Rome – a golden anniversary – 50years on?’, Warsaw 9th-10th of March 2007., pp. 5 – 6.

Services of general economic interest have special treatment in the Treaty of establishing the European Community (TEC). They have a public service mission in single European market, which distinguishes them from other commercial services.

Article 16 of the Treaty says: “...given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfill their missions”.

Article 86 (2) says: “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”.

Services of general interest also feature in the **Charter of fundamental rights** of the European Union.⁸ Article 36 of Charter says: “Access to services of general economic interest: The Union recognizes and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union”.

Public services also have a special status in EU Constitution⁹. In Article III-122 of Constitution states:

... “given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfill their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services”.¹⁰

In the document White Paper on Services of General Interest¹¹, the Commission recognized primacy of general interest mission over the application of the Treaty competition rules. This primacy laying in nature of many social and health

⁸ See http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁹ See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>

¹⁰ We can see that EU Constitution consistently using similar terminology, as well as earlier documents of institution of European Union.

¹¹ Com (2004) 374, from 12. 05. 2004.

services, organized on noncommercial base. It implies obligations that are very different from those offered on a commercial basis.

The term “*services of general economic interest*” has been used in art. 86(2) Treaty of establishing the European Community (TEC), but it had not been defined there, also the judgments of European Court of justice for a long time created from specifying the precisely content of such services, underlying mainly the economic aspect of that services.

The definitions of services of general economic interest and services of general interest as originally elaborated by the Commission’s Communication on Services of General Interest, in Green Paper on Services of General Economic Interest and White Paper on Services of General Interest are generic ones, adapted to the growing Communitarian involvement in the field. They had to take into account the terminological differences and Member States’ traditions as well as historical, economic, cultural and political developments. They might serve as a universal point of reference, but despite this, in all the discussions the Member States refer rather to their national notions to underline the differences, special situations and divergences.¹²

Services of general economic interest, as a unique European type of public services, covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications. Term also extends to any other economic activity subject to public service obligations. Both the Green Paper and the White Paper focus mainly, on issues related to “services of general economic interest”, as the Treaty itself refers to economic activities. The term services of general interest is introduced in the White Paper only where the text also refers also to non-economic services or where it is not necessary to specify the economic or non-economic nature of the services concerned. It is also important to say that the Treaty does not recognise the term of services of general interest. Term “services of general interest” is broader than the term “services of general economic interest” and covers commercial and non-commercial services, which the public authorities classify as being of general interest and subject to specific public service obligations.¹³

Directive on Services in the Internal Market, known also as the Bolkestein Directive¹⁴, is designed to create a single market for all commercial services in the EU, by removing economic and administrative barriers, and creating a level playing field for companies across Europe.¹⁵ It covers a huge range of commercial service providers ranging from legal advisers, estate agents, travel agencies, car rental companies, etc.

¹² See Gromicka, E., 2007, op. cit., p. 6.

¹³ Ibid, p. 7.

¹⁴ Directive called so by Frits Bolkestein, Dutch politician, and former European Commissioner. In the European Commission, Bolkestein was responsible for Internal Market, Taxation and Customs Union issues.

¹⁵ The established of Directive on Services in the Internal Market, is very important, because most of the economy of European Union are based on services.

The European trade union campaigned to amend elements of the proposal that threatened the interests of consumers and workers in the EU. This is specially refers on the exclusion of SGEIs, because they fulfils a different mission from commercial services and cannot be governed by the same rules.¹⁶

The text proposed by the Commission and Council was some kind of compromise, which are finally approved by the European Parliament in November 2006.¹⁷ Final version of Directive excluded noncommercial services of general interest, and covered services of general economic interest only if the application of such rules does not obstruct the performance of providing services, or the particular tasks assigned to them. It also excluded healthcare service and some social services, specified as social services relating to social housing, childcare and support of families and persons in need.¹⁸

3. SERVICES OF GENERAL ECONOMIC INTEREST AND THE STATE AID

The applying of European rules on SGEIs implied some serious consequences on financing them by State Aid. The field of State Aid regime characterized absence of formal rules and high sensitivity on Commission decisions about possible suspensions some type of state aid, and consequences it might have on national industrial policies. There was very little legislation until 1997, in the field of State Aid, and Commission Policy is created as result of applying Treaty itself, or court's judgments. In the mid 80's, Commission substituted the lack of formal rules with the informal means of guidelines and recommendations for firms.

Court's judgments and Commission's individual practice, in time have been transformed into criteria for the assessment of State Aids. These criteria were then used to formulate policy statements and guidelines; then if there were changes in the policy context, which was inevitable, they were updated and clarified the assessment criteria, which were the base for the original policies. Commission

¹⁶ See <http://www.etuc.org/a/3167>.

¹⁷ In earlier version of Directive there were three basic elements: "freedom of establishment principle", "country of origin principle" and "mutual assistance principle". *Freedom establishment* means that if an individual or a company is able to provide a service in one EU country, should they wish to provide service in another Member State, there should be very little or no legal or administrative restrictions on them doing so. *Country of origin* means the free movement of service providers on a temporary basis, to encourage individuals or companies to test other markets without first having to establish on the other country. This means that that the company or individual may provide services to consumers in another Member State on the basis of the laws of its country of establishment, without registering with the regulators in the host Member State. *Mutual assistance principle* means that it must be cooperation between member Countries in field of harmonisation measures, with respect to consumer protection, and undertake the other measures to promoting and holding the quality of services. See more in Weber, L. – Asmus, J.: "The Internal Market for Services of the European Union – Evidence from OECD-Panel Data", MPRA paper No 11441, 06. November 2008.

¹⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>.

has been concerned with the different forms of State Aid, such as subsidies, direct grants, loans and state guarantees.¹⁹

With growing of various forms of State Aid, as well as with the liberalization process, Commission's attention has been drawn to the aids granted through the fiscal or social measures compensating undertakings for the provision of services of general economic interest. The assessment of these measures proved to be a very difficult task, with many doubts as to the application of the exceptions prohibiting distortive aid.

Situation seemed to be quite straightforward. State aids were prohibited, apart from those that were clearly authorised either directly by the Treaty in Article 87 of Treaty, which lays down the general principle prohibiting State Aid, which is capable of distorting competition and affecting trade between Member States. In Article 87 are types of State Aid which are incompatible with the functioning of common market. Obligation of prior notification applies to them without any exception. European Commission must verify if it is some kind of State Aid in concrete cases compatible with the common market.

Article 87 also sets out the types of aid which may be considered to be compatible with the common market, subject to the Commission's decision. The Commission has a wide margin of discretion when assessing compatibility of the aid, but also it must take into account all relevant factors for making decisions.

There is no requirement that the Commission permits a proposed measure solely because it is in conformity with one of the objectives of Article 87. The proposed aid must be necessary for the attainment of those objectives. The duration, intensity and scope of the aid must be proportionate to the importance of the intended result.²⁰

Article 86(2) of a Treaty establishes an exception which include the operation of services of general economic interest. It constitutes the central provision for reconciling the Member States interest in using certain undertakings as an instrument of economic, fiscal or social policy with the Community's interest in ensuring compliance with the rules on competition and the preservation of the unity of the common market. The Court and the Commission had shown great reserve in using Article 86 (2) of the Treaty in the context of the State Aids.

The European Community courts have established that an agreement in restraint of competition, abusive conduct by a dominant undertaking or a grant of certain exclusive rights excluding competition by other economic operators may be necessary and proportionate to the objective of ensuring the provision of SGEIs in conditions of economic and financial stability. It was never said that the

¹⁹ See more in Alexis, A.: "*Services public set aides d'Etat; Evolution récente de la jurisprudence*", *Revue du Droit de l'Union Européenne* 1/2002, p. 63 – 107.

²⁰ Article 73 provides explicitly in the case of transport, that aid is to be compatible with the Treaty if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service.

provisions of SGEIs in these cases fell outside of the scope of the relevant Treaty rules.²¹

It was considered that the characterization of some measure as aid depends solely on the question whether or not it confers an advantage on one or more undertakings. The Court stressed that the objectives pursued by the Member State's public authorities should not influence the assessment of the measure as the aid and that they can be taken into account only at a later stage, to determine whether the measures are justified under derogations provided for in the Treaty. The Commission stated that public funding for services of general economic interest that may be liable to affect trade must be examined in the light of the specific provisions on State Aids contained in the Treaties. It has to be defined that competition rules will be applicable only where the conduct in question will be liable to affect the trade between Member States. In the case *Bagnasco* European Court of Justice held that such an effect exists. So, it is possible to foresee with sufficient probability, on the basis of a set of objective factors of law or fact, that the conduct in question may have an influence on the pattern on trade between Member States, such as might prejudice the realisation of the aim of single market in all the Member States. The court stated that even relatively small amount of aid or small size of undertaking may affect negatively on trade between Member States.²²

In the case *Confederacion Espanola de Transporte de Mecancias*, Court of First Instance stated that it is enough that this financial aid strengthens the position of an undertaking compared with other undertakings competing in Community trade, and consequently the trade must be regarded as affected by that aid; the advantage granted must be selective, that is given to number of undertakings or to an individual sector.²³

Altmark case was confirming the earlier approach: as long as there is no compensation, there is no advantage, and in that case, the test of illegal State aid in Article 87(1) doesn't need. The compensation merely puts the undertaking charged with the public service obligation, back on an equal footing with competitors.²⁴

Altmark case provided four conditions identified in the judgment, those public services obligations payments can be considered to fall outside Article 87(1) of Treaty. If they fall outside of Article 87(1) Treaty do not constitute State aid. If they do not constitute State aid, then they do not have to be notified to the European Commission. This create for decision makers in Member Countries some discretion over whether or not notification is necessary, and they do not have forcing central decision taking by the European Commission.

²¹ See Gromnicka, E., 2007, op. cit. p. 15.

²² Ibid, pp. 15 – 16.

²³ Ibid., p. 16.

²⁴ See Sauter, W.: „Services of general economic interest and universal service in EU law, TILEC Discussion Paper, DP 2008 – 017, May, 2008., ISSN 1572 – 4042, 2008., p. 32.

The first condition is that the undertaking must have been given public service obligations to perform and that obligation is clearly defined.

The second condition is that the parameters for compensation must be established beforehand in a transparent and objective manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings.

The third condition is that the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

The fourth conditions laying in that where the undertaking which is to discharge public service obligation is not chosen pursuant to a public procurement procedure which would allow for the selection of the tendered capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.²⁵

Member States have wide discretion in designating services of general economic interest. The Commission can only control for manifest errors in this designation. This stimulates the Member States to consult widely, in particular among consumers, prior to defining public service obligations. An official act is required, which must specify the nature and the duration of the public service obligations, undertakings and the territory concerned nature of any exclusive or special rights assigned to the undertaking, parameters for calculating, controlling and reviewing the compensation and arrangements for avoiding and repaying any overcompensation.²⁶

4. SOCIAL SERVICES OF GENERAL INTEREST (SSGIS)

European Commission was presenting new document, “*White Paper on services of general interest*”²⁷. This document represent attitude of European Commission on this type of public services.

²⁵ See „*Interpreting the Almark decision – the challenges from a private practitioner’s perspective*”, www.mcgrigors.com/pdfdocs/pl_state_aid_paper.pdf, pp. 3. – 6. See also Case C-280/00 *Almark Trans* [2003] ECR I-7747.

²⁶ See Sauter, B.: „*Services of general economic interest (SGEI) and universal service obligations (USO) as an EU law framework*” for curative healthcare, Tilburg University, 2007, pp. 29.

²⁷ This is “*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*”. See COM (2004) 374 final, 12. 05., 2004.

In this document European Commission says that “...recognising the crucial importance of well-functioning, accessible, affordable and high-quality services of general interest for the quality of life of European citizens, the environment and the competitiveness of European enterprises, the European Commission adopted a Green Paper on services of general interest.... The Green Paper invited comments on the overall role of the European Union in defining the public service objectives pursued by services of general interest and on the way these services are organised, financed and evaluated”. This state indicates that European Commission recognising SGEIs as one type of services of general interest. In those types of services, authority for their regulation is divided between European Union and Member States, because this type of public services has commercial nature, and can be profitable. European Commission insists on liberalisation of these types of services, and creating a new framework on single European market for all potential operators and providers of services.²⁸

The opposite situation is with the other type of public services which they have not commercial nature. These types of services operate in non-commercial conditions, and can not be profitable. Member States provides these types of services in accord with their financial possibility.²⁹

Both type of public services, commercial and non-commercial have one common characteristic, and this is public interest for their performing.

At first, it was no particular interest for non-commercial public services, because “, providing this type of services did not brought competition on single European market in question.

In the mean time, European commission recognise that non-commercial services huge social impact to people live, and stated that is necessary to enforce new standards for performing both types of public services, commercial, or non commercial, for citizens of European Union.

In the White Paper the Commission stated: “...The Green Paper on services of general interest raised a considerable interest from interested parties in the area of social services, including health services, long term care, social security, employment services, and social housing. Social services of general interest have a specific role to play as an integral part of the European model of society. Based on the principle of solidarity, social and health services of general interest are person-centred and ensure that citizens can effectively enjoy their fundamental rights and a high level of social protection, and they strengthen social and territorial cohesion. Their provision, development and modernisation is fully in line with the achievement of the objectives set at the Lisbon European Council of

²⁸ See Damjanovic, D.: “The EC market rules as socio-cultural policy instruments in Europe A normative analysis”, Conference An alternative to the market. The social, political and economic role of public services workshop II: EU policies on public services: stock taking and critical assessment Organisers: ETUI-REHS, EPSU, SALTSA, Brussels, November 19-20, 2007., p. 5.

²⁹ See Damjanović, D. – de Witte, B.: „Welfare Integration through EU Law: The Overall Picture in the Light of the Lisbon Treaty“, EU Working Paper LAW No. 2008/34, ISSN 1725-6739, pp. 28 – 29.

*March 2000, and in particular with the goal of achieving a positive link between economic, social and employment policies. The public consultation has shown that providers of social services are ready to engage in a modernisation process in order to better respond to changing needs of European citizens. However, they also expressed a need for greater clarity and predictability necessary to ensure a smooth evolution of social services, including health services.*³⁰

In the documents Commission established idea that the definition of the missions and objectives of social and health services is a competence of the Member States, and that Community rules may have an impact on the instruments for their delivery and financing.

Commission stated: “...A clear recognition of the distinction between missions and instruments should help to create more clarity with a view to the modernisation of these services in a context of evolving user needs while preserving their specific nature in terms of the particular requirements of, amongst others, solidarity, voluntary service and the inclusion of vulnerable groups of people. Clarifying this distinction will in particular assist Member States which use market-based systems to deliver social and health services to anticipate the possible impact of EU competition law on them.”³¹

In 2006, Commission is published a new document: **Implementing the Community Lisbon programme: Social services of general interest in the European Union.**³² This document are explained a new approach of European Commission on Social Services.

Document not covered health services. It covered two categories of social services of general interest: statutory and complementary social security schemes and other essential services provided directly to the person.

First, statutory and complementary social security schemes are “...services that organised in various ways (mutual or occupational organisations), covering the main risks of life, such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability.”³³

Second, essential services provided directly to the person are “...services that play a preventive and social cohesion role consist of customised assistance to facilitate social inclusion and safeguard fundamental rights. They comprise, first of all, assistance for persons faced by personal challenges or crises (such as debt, unemployment, drug addition or family breakdown). Secondly, they include activities to ensure that the persons concerned are able to completely reintegrate into society (rehabilitation, language training for immigrants) and, in particular, the labour market (occupational training and reintegration). These services complement and support the role of families in caring for the youngest and oldest

³⁰ See COM (2004) 374 final.

³¹ Ibid.

³² See COM (2006) 177 final, 26. 04. 2006.

³³ Ibid., p. 4.

members of society in particular. Thirdly, these services include activities to integrate persons with long-term health or disability problems. Fourthly, they also include social housing, providing housing for disadvantaged citizens or socially less advantaged groups. Certain services can obviously include all of these four dimensions.”³⁴

• European Commission recognizes the general interest role for these type of services and analysis some of their organisational characteristic:

- they operate on the basis on a solidarity principle,
- they are comprehensive and personalised integrating to response to differing needs,
- they can guarantee fundamental human wrights and protect the most vulnerable,
- they include participation voluntary workers, non-government organisation and institution of civil society,
- they are non profit type of services,
- they are part of the local cultural traditions and including an asymmetric relationship between providers and beneficiaries.

In the Communication European Commission indicating on general trends towards modernisation of social services in a Member States. Some of those trends are influence of users on administration, decentralisation of social services organisation to local or regional level, outsourcing of public sector task to the private sector, tendency that public authority becoming regulators and development of public private partnership, and applying other forms of public founding.

European Commission proposing apply of subsidiarity principle in providing social services, clear distinction between economic and non-economic services of general interest, managing of a social services under a public-private partnership, using a external bodies for the performance of a social mission of general interest, and establishing a regulatory framework in situation that private operators provide social services. If private operators provide social services, regulatory framework must provide equal conditions on the market for all of them.

In maintains to create a new vision of social services in Europe, Commission would carry on about more different facts, like:

the elements constituting these characteristics as well as their pertinence to gauge the specific features of social services of general interest;

how they could be considered by the Member States when defining the general interest missions of social services and the arrangements for their organisation, so as to ensure a good institutionalised link with the Community framework;

the experiences with the application of Community law in the field of social services of general interest and possible problems that are faced in this context;

³⁴ Ibid.

how the same (or other) characteristics could be considered by the Commission where it has to check subsequently and individually, the compatibility of the organisation modalities of social services with the applicable Community rules.³⁵

5. CONCLUSION

This text has been tried to explain the basic aspects in the process of liberalization of public services in the legal order of European Union. In this regard, noted the division of public services on economic and non-economic services. First have a commercial, and other have non-commercial character.

Economic public services are in the focus of the interest the institution of the European Union, especially European Commission and European Court of Justice. For these types of services they use general term “services of general economic interest”. These services are important for the establishing and functioning of the single European market. In this market general role should be play different type of services. SGEI are one of the most important parts of services which would be provided on single European market.

That is the reason why European Commission and European Court of Justice have strongly influence on the shaping of the concept of SGEI in the law of European Union.

European Commission has made more documents to get determines which services are considered services of general economic interest. In these documents, it makes a distinction between services of general economic interest and other public services. First services, which have commercial character, are subject to the Treaty of establishing the European Community, the Article 16 and 86 (2). These services are subject to the rules of competition in single European market. Because of this, the service can not be subject exclusively to jurisdiction of the Member States.

The most important document published by Commission is the Green Paper on Services of General Economic Interest. In this document, the Commission recognizes that there is a public interest member country to carry out various economic activities in the regime of public service. However, due to commercial nature of these services, this right is a limited with Treaty of establishing the European Community.

Therefore, there exist shared jurisdiction, between the Member Countries on one side and the EU on the other side, regarding the ways of organize and provide financial assistance in the performance of SGEI.

The European Court of Justice of its judicature strongly supported the attitude of the Union regarding the responsibility of conducting and funding SGEI. In this

³⁵ See COM (2006) 177 final, pp. 9-10.

sense, it is necessary to specifically highlight the importance of Altmark case, which set new standards related to the financing SGEI by the member states.

Therefore, it can be concluded that the basic intention of the EU institutions are directed towards liberalization conduct SGEI. At the same time, it is recognized the legitimate right of a member state to a special regulation to provide realization of public interest in the performance of these activities. The Member States may this right use, but only in extent to which it is not against EU regulations. These two, sometimes opposed interests, trying to reconcile the establishment of regulatory bodies. These bodies should ensure the establishment of competition in the single European market.

As regards non-commercial public services, last documents showed that EU institutions have more interest for these types of services, because they recognize their importance in everyday life the citizens of the Union. It can be noticed that Commission consistently insist that the parts of these types of public services, who can have commercial character, should be liberalised, and settled them on the market.

However, it seems that the world economic crisis affect on the models and solutions that have so far represented the European institutions. This is especially refers on regulatory mechanisms and regulatory institutions, which are in the financial sector showed incredible inefficiency and unwillingness to regulate financial flows. Therefore, it can be expect higher role of regulatory institutions and a lot of strict control in carrying out economic activities.

TEMELJNI ASPEKTI JAVNIH SLUŽBI U PRAVU EUROPSKE UNIJE

Javne službe su važan dio sustava javne uprave. Ove službe zadovoljavaju temeljne ljudske potrebe, te su neophodne za svakodnevni normalni život građana i društva u cjelini. U pravu Europske Unije postoji temeljna podjela na dva tipa javnih službi: komercijalne i nekomercijalne. Prve se nazivaju službama od općeg gospodarskog interesa. Druge se nazivaju socijalne službe od općeg interesa. U ovom radu će se analizirati temeljni pravni aspekti koji uređuju ove tipove službi u pravu Europske Unije, kao i odnos između Europske Unije i država članica glede njihove međusobne nadležnosti u regulaciji javnih službi.

Ključne riječi: *javna uprava, javne službe, službe od općeg gospodarskog interesa, socijalne službe od općeg interesa*