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## WHAT SERVICES ARE PUBLIC? WHAT ASPECTS OF PERFORMANCE ARE TO BE RANKED? THE CASE OF 'SERVICES OF GENERAL INTEREST'

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ABSTRACT

In this article, we focus on the difficulties in evaluating the performance of so-called services of general interest. These services generally include such services as water and electricity supply, telephony, postal services, and public transport, where providers are subjected to certain universal service obligations. Because of the tensions between European internal market requirements and these universal service obligations, there exists considerable debate on the criteria to be used to evaluate the performance of these services. In addition, the status of these public services as 'public' or 'essential' services is disputed. Rankings of the performance of these services will always reflect a certain dominant definition of performance. Ranking schemes as a result both reflect and create performance.

*Keywords: Services of General Interest, public service values, liberalisation, universal service delivery, ranking public services*

RANKING PUBLIC SERVICES: BUT WHAT IF THERE IS NO BASIC  
AGREEMENT ON THE RANKING?

The main purpose of the mail service is to transport letters from A to B in a cost effective way. Few, however, would agree that this should lead to inhabitants of remote areas paying exorbitant amounts of money to send and receive mail, or that they should receive just one delivery every fortnight. Others would even add the role of the mailman in communities' social fabric to the 'performance' of a mail service. Likewise, many would agree that the inability to pay for the delivery of electricity or water should not mean that families or the elderly will have to be disconnected. Some aspects of 'performance' escape traditional notions of performance, and the enjoyment of certain public services is considered to be more essential than that of others. There is no agreement on many of these issues. The differences in opinions of what performance means become more visible when regulation of public services crosses national boundaries, as is currently the case in the EU.

Most public services deliver several competing values at the same time (Ostrom 1974; Kaufman 1956; Rosenbloom 1983). Clear and unambiguous definitions of performance do therefore not often exist. Such a basic disagreement on what it means for a service to perform creates major problems when we want to rank and rate performance in the public sector. Simple ratings and rankings rest on an illusion of agreement about the role, tasks and values of public services. An accepted ranking and rating system for a type or a group of public services requires at least a certain agreement on the criteria used for defining performance. A system that would rank schools only using exam results, or hospitals only using patient satisfaction is

likely to be heavily criticised. Yet, there generally exists a certain agreement as to the core values of these public services and the performance expected of these services.

Rating and ranking the performance of public services is becoming increasingly popular (Van de Walle and Roberts 2008; Hood 2007; Hood et. al 2008), and is also gradually permeating the regulation of public services at the national and the international level – the EU in particular. In this article, we will study a public service area where there is little agreement on what it means when we say these services ‘perform’, and we will use this disagreement to reflect on the challenges in and consequences of designing and implementing a ranking system. We will explore the case of Services of General Interest (SGI) in Europe to show how debates about the public values of public services have an impact on how we look at the performance of these services. ‘Services of General Interest’ generally refers to services such as public transport, mail services, or utilities - services that often operate at the crossroads between the public and the private. The key argument in the debate about the performance of SGI is about whether these public services are different from typical private services, and whether they should be considered as ‘of public interest’ and thus essential to society, and therefore to be treated differently.

In the first two sections, we introduce the (European) concept of Services of General Interest, and show why these services deserve special attention and may be a special case in the rating and ranking debate. Services of general interest operate somewhere between government and the market, and our conceptions of the ‘general interest’ have an important impact on how we define performance. We therefore proceed by analysing ‘the general interest’ in public service delivery using the

doctrines of ‘public service’ and ‘common callings’. The core of the article will examine how the European approach to SGI has changed over time, and what this says about our conception of ‘the general interest’. This observation will then lead to a discussion of the difficulties to reach an agreement of what it means to perform for these services in a European multi-country, multi-actor context. We end by discussing the implications of this contestation on the ranking of Services of General Interest and the impact of rankings on the debates about performance.

This article will mainly use existing literature on the ‘general interest’ dimension of public services, and a series of legal documents, the European Treaties more in particular. This will not be an analysis, however, of court cases related to SGI, because they have received considerable attention elsewhere (Prosser 2005; Rott 2007; Bovis 2005; Scott 2000; Freedland and Sciarra 1998; Sauter 2007), and because because it is the politics of the process that is mainly of interest here.

## SERVICES OF GENERAL INTEREST: A CASE OF CONTESTED PERFORMANCE

In this article, we will argue that ranking public services is difficult if the status of such services is disputed, and therefore the definition of what it means for these services to perform is also contested. Services such as public transport, mail services, or utilities typically operate in an environment of competing values characterised by economic liberalisation, free trade, and increasing competition. Many of these services are or used to be government-operated or government-owned, and European integration has inserted considerable market pressure and competition into their operation. Economic efficiency considerations, market pressure, and

transnational competition now challenge public service objectives such as universal access, affordable prices, or territorial and social cohesion (Héritier 2001; Mangenot 2006; Behrens 2001). Policy-makers therefore are looking for ways to balance market values, such as free trade and competition, with non-market values such as universal service (Moral Soriano 2002).

These challenges have seen the emergence of a massive literature on the legal aspects, the organisation, and the funding of universal service obligations and other social imperatives. There has however been surprisingly little research on *why* we consider these obligations worthy of funding, and *why* we consider the existence, presence, affordability, and quality of certain services at the intersection of the public and the private sector as essential or *in the public or general interest*. The debate on what it means to perform for these so-called services of general interest is different across the different EU Member States, and has evolved over time (Van de Walle 2006; Prosser 2000). Such disagreements and evolutions make regulation difficult; they make the drafting of legislation the outcome of political negotiation; and they make the development of ranking and rating schemes subject to severe criticism.

The key element in this debate is whether a certain service ought to be recognised as different from a standard private service. Defining a certain services as ‘of general interest’ or ‘essential’ changes the acceptable arguments in the debate about performance. When there is little common ground in discussions about the performance of a service, making a ranking will not help to solve this problem. It mainly brushes over the basic disagreement of whether the service has or should have a ‘public’ character. Defining services as *public* services, *essential* services, or *universal* services is an important rhetorical device in defining the acceptable criteria

for assessing performance. By doing so, efficiency deficits can be defined away by referring to other ‘performance values’ of these services.

The case of services of general interest is an interesting one in this respect, because it clearly shows how conceptions of performance have changed. The analysis of European Treaty texts and court cases shows a gradual shift in the European approach towards a growing recognition that competition law and free trade alone may restrict SGI’s ability to perform. It shows the gradual acceptance of a new definition of performance for these services (EIPA and *Présidence luxembourgeoise* 2005, 44).

#### THE CONCEPT OF ‘SERVICES OF GENERAL INTEREST’

The 1957 Treaty of Rome already mentioned the concept ‘Services of General Economic Interest’ (SGEI), and the term has become more prominent in the 1990s. The concept has never been properly defined, and is still “rather hazy around the edges” (EIPA and *Présidence luxembourgeoise* 2005, 47). It refers to public services of an economic nature “subject to specific public service obligations by virtue of a general interest criterion” (Commission of the European Communities 2004). It generally includes public services such as water and electricity supply, telephony, postal services, and public transport. These are services with a general interest character, and they are often subject to specific public service obligations such as universality or accessibility.

The slightly different term ‘Service of General Interest’ (SGI) refers to non-market public services in European countries (such as social security, education, justice). These are considered state prerogatives and are not subject to competition

and internal market rules in the same way as SGEI are. The same term is however also used as an umbrella term to talk about both market and non-market public services. It is the latter use that we will adopt in this article. SGI are also sometimes referred to as *key services*, *basic public services* or *essential services*. There is also a trend to just use the word ‘public services’ and to define these as services to which all citizens have “equal rights to access and to enjoy” (Clifton, Comin, and Diaz Fuentes 2003, 130). The concept obviously reminds of such concepts as ‘common goods’ or ‘public goods’. By using ‘services of general interest’, we locate this article within the European debate about public services reform, and focus our attention on changing conceptions of ‘essentiality’ or ‘universality’ in the organization and delivery of public services.

#### WHEN IS A SERVICE ‘OF GENERAL INTEREST’ OR ‘ESSENTIAL’ – CHANGING CONCEPTIONS

The above has already shown that considering a certain service as an essential service or as a service ‘of general interest’ has important implications for how we regulate and organise these services. Changing the status of a service from ‘public’ to ‘non-public’, or from ‘non-market’ to ‘market’ changes the entire framework for discussing the performance of these services. When the parties in a debate do not agree on this public or non-public status, talking about performance becomes difficult, because they will use *different* definitions of performance. This shows that identifying a certain service as a ‘public’ service or as an ‘essential’ service allows you to introduce other arguments in the debate. Likewise, denying a service its ‘public’ status changes the accepted definitions of performance. An example clarifies this. When two parties do not agree about the ‘publicness’ of rail travel, a discussion about



the performance of rail travel becomes difficult, because the two parties are likely to use fundamentally different conceptions of what it means for a rail service to perform.

Our conceptions of what constitutes essential public services and essential public service values vary widely. Charles et al. (2007, 5) distinguish between universalistic and relative approaches to public values, whereby the universalistic approach treats certain public values as inalienable or natural rights, and the relative approach sees them as evolutionary and context-specific concepts. In this section, we will show how the doctrines of ‘public service/*service public*’ and ‘common callings’ have shaped our conceptions of public service, and how these conceptions have changed over time. Then we will return to Services of General Interest and analyse the evolution in the European approach towards the recognition of the ‘general interest’ component of these services.

### *Service public* and Common Callings

Part of the debate of whether certain services and provisions are ‘of general interest’ or ‘essential’, is influenced by historical evidence, and broad legal frameworks. In a country such as France, the concept *service public* has served as the basic framework for discussing the provision of services. No such concept exists in common law, but the concept of ‘common callings’ shows some similarities.

The concept of *service public* emerged in the late 19<sup>th</sup> century in France as the basis for administrative law. Its function was, and is, to legitimise public intervention in society, and makes the state a body to serve the collective. *Service public* is considered a European continental concept. While the French version is the best

developed exponent, similar concepts exist in some other countries (e.g. Italy) (Prosser 2005; Prosser 2000). An important characteristic of *service public* is that it refers to both the material services, and the principles of provision (Scott 2000, 312). As a result, the doctrine of *service public*, and the actual organisation of services are different things (Denoix de Saint Marc 1996), and *service public* can therefore also be used to regulate private providers. In France, “the definition of public service is notoriously difficult and elusive” (Prosser 2005, 97), it is largely undefined, and is constantly changing (Obermann, Hall, and Sak 2005; Malaret Garcia 1998). The principles are commonly recognised as equality, continuity of services, and mutability or adaptability. The concept does not provide us with a list of ‘essential services’, but it shapes and reflects the wider social and political debate, and it is conscious of organisational and technological changes in the delivery of services.

As opposed to many continental European countries, there is no overall concept structuring the legal position of public services in common law countries. Their position is generally shaped by a series of sector-specific public service obligations (Clifton, Comin, and Diaz Fuentes 2003, 126; Scott 2000, 313). Yet, common law has the older notion of ‘common callings’, which is of medieval origin and refers to a private person or entity subject to special liabilities and duties (Amato 1998, 153). Current use of the doctrine is also seen in the use of the concept ‘common carrier’, or in the related concept of ‘businesses affected with a public interest’ used in the US (Scott 2000, 313). While the concept does not as such exist in Roman law, it has some similarity to the ecclesiastical doctrine of just price, which forbids excessive profit. The ‘common callings’ concept is mainly used to define liabilities, but it also gives us an intriguing insight in the types of services that are or have been considered

to be of public interest. A common or a public calling can be defined as “any business whose activities have, as either a process or an output, a significant ‘public interest’” (Kopp and Landry 2000, 36). These establishments had a duty to use care and to serve all (Arterburn 1927); they cannot arbitrarily refuse to serve certain individuals, or charge exorbitant fees (Kopp and Landry 2000, 37). The concept was expanded in reaction to monopolistic practices of businesses and trade in a period of skilled labour shortage as a result of the 14<sup>th</sup> century Black Death plague in England (Adler 1914). With the emergence of modern networked utilities, interest in the doctrine re-emerged - especially in the US - and it was suggested as a solution for regulating monopolies (Wyman 1904).

The list of professions that have in the past been defined as common callings is quite long and varied, and includes professions such as barbers, bakers, tailors etc. The classic examples are smiths (farriers to be more precise) and innkeepers, services which we would now consider as typical private services. Travellers travelling dangerous roads needed a safe place to stay at night. Inns were far and few between, and a refusal by the innkeeper to serve by not letting a traveller in, or by failing to provide proper service by letting strangers into the sleeping rooms, would endanger the traveller’s life and goods. We still see some leftovers of this principle in the use of the word ‘public house’ to refer to pubs. Farriers for a similar reason were obliged to serve all at a reasonable price, because a refusal to shoe a traveller’s horse could endanger the traveller. Charging exorbitant prices was seen as abusing one’s monopoly position, because distances between two smiths tended to be quite large in medieval times. Farriers ceased to be seen as common callings when travel methods

changed from horseback to stagecoach (Rosenbaum 1931, 160). The concept was also frequently used to regulate common carriers by land and water (e.g. ferries).

There was never a fixed list of services subject to the common callings doctrine, and it has been applied to a wide variety of services and installations such as grain elevators, fire insurance, tailors, surgeons or barbers (Burdick 1911, 523), housing in times of emergency (Kopp and Landry 2000, 40), or normal skilled labour in times of labour shortage. The application of the concept has gradually become more restricted. The historical example of common callings is important for our analysis of SGI because it shows that any type of business can have a public interest dimension, and that socio-economic circumstances have an important impact on how we perceive the public interest. In the next section, we will show how we can observe an evolution in the perception of what is comprised under public service by analysing European policy on Services of General Interest.

### Changing Conceptions of SGI in Europe

The changes and differences in what is considered an essential service are clearly visible in the shifting debate about Services of General Interest in European countries. Both from sector-specific regulatory practices and from evolutions in legal texts - the Treaties more specifically - we can deduct a changing conception of the 'general interest' in the delivery of certain public services. The EU's approach to SGI has at the same time been criticised for its ultraliberalism and for its protection of inefficient state monopolies. The concept 'public service' as used in Community case law is quite general, and not very precise, and thus open for many different interpretations.

Yet, when we look at country- and sector-specific practices in regulating public services, an overall image of what is ‘the general interest’ in service delivery emerges (Héritier 2001, 825; Cremer et al. 2001). Providers of certain services are subject to specific obligations such as accessibility, quality and continuity (Clifton, Comin, and Diaz Fuentes 2005). The regulatory decisions have often been taken on a case by case and ad hoc basis, yet there is a strong degree of similarity between universal service obligations in European countries (Clifton, Comin, and Diaz Fuentes 2003, 132). In some sectors, there is a quite strong consensus on what is meant by universal service. Postal services and telecommunications are the best examples (Cremer et al. 2001).

The most visible changes, however, emerge from an analysis of key European policy documents and legal texts on Services of General Interest. They show a growing recognition of the need to restrict free competition in certain sectors (Prosser 2005, 140). The 2005 Green Paper on Services of General Interest, and more recently the 2007 Communication by the European Commission clearly demonstrate an evolution towards stressing the positive contributions of SGI to society, rather than labelling them as national bodies exempted from competition (European Commission 2003; Commission of the European Communities 2007).

Despite the rhetoric about the ultra-liberal tendencies in the European project, the special position of SGI was recognised early on in competition policy, not at least because most of these services were still mostly state-owned when the European project crystallized. Then, public ownership of certain utilities and infrastructures was seen as essential to safeguard the public interest, and competition policy was seen as

an infringement on national prerogatives (Charles et al. 2007). Later developments in competition policy reflected a recognition that that liberalisation ought not threaten the provision of services providing basic needs (Clifton, Comin, and Diaz Fuentes 2003, 128-130).

We see a first mention of public service obligations in the 1957 Treaty of Rome, establishing the European Economic Community, which allowed for state aid in the transport sector if such aid represented a “reimbursement for the discharge of certain obligations inherent in the concept of a public service” (title IV, art. 77). Yet no further definition was provided for “the concept of a public service” or “certain obligations”. Article 90(2) in the Treaty (later 86(2)) is equally vague:

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.

A great deal of jurisprudence has developed around this so-called “public mission exception” (Moral Soriano 2002, 211; Van den Abeele 2005). Thinking about the concept evolved through sector specific changes and soft law, but we have also seen a gradual *constitutionalisation* of the concept (Thyssen 2005, 89). The Treaty of

Amsterdam (1997) expanded the idea of an exceptional situation for certain public services within the internal market, by inserting an article into the Treaty:

Without prejudice to Articles 73, 86 and 87, and 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 fulfil their missions (article 16 EC).

This article reflects disagreement on Europe's role in organising or regulating these services of general economic interest, especially its role vis-à-vis the member states. Overall, however, it signifies a major change in the European approach to liberalisation because the article "recognizes that state intervention does promote Community values" (Moral Soriano 2002, 209) - quite a change from the earlier philosophy. Apart from mentioning social and territorial cohesion, the article remains very vague about the precise meaning of the "shared values" and of the "principles and conditions which enable them to fulfil their missions".

Whereas originally the debate on SGI was framed negatively - SGI as an *exception* in European competition policy - the debate has in the most recent decade become more positively framed. This is visible in the European White Paper on Services of General Interest which gives public services an explicit role in increasing the quality of life, and in overcoming social exclusion and isolation. Such a role

implies universal service which guarantees access to everyone, whatever the economic, social or geographical situation, to a service of a specified quality at an affordable price (Commission of the European Communities 2004). Around the same time, in the proposed European Charter of Fundamental Rights, article 36 in the chapter on ‘solidarity’ dealt with access to services of general economic interest, where,

The Union recognises 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 (art. 36)

Recently, in the proposed Reform Treaty or Lisbon Treaty, art. 16 (EC) was slightly modified and became art. 14. The “principles and conditions” mentioned in the Amsterdam Treaty now became further specified as “particularly economic and financial conditions”, which may, together with the addition of a new §2 to the article, open up the way for the drafting of a Framework Directive outlining organisational and financial arrangements for safeguarding public values in SGI. At the same time, some first steps are being taken in the area of social services to facilitate the definition of services of general interest (Onnée and Ghékiere 2007).

More important, however, was the addition of a new protocol to the Treaty on services of general interest. It reaffirms some of shared values implicit in SGI (affordability, equal treatment etc.), but, also, it reaffirms, or even strengthens, the principle of subsidiarity and the “wide discretion of national, regional and local



authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users”. Yet, at the same time, another protocol to the Treaty reaffirms the principle of the internal market and competition. While the protocol does not say anything new, it highlights “the deep concerns held by the Member States that something essential may slip from their control” (Sauter 2007, 6).

These changes clearly show a concept in evolution. Where the early texts reflected a context of state-owned services and a need to open these up to competition, recent texts highlight the non-economic values of these services and their role in the European social fabric. There has been a change in the legislation and the European approach “from market building to citizenship” (Prosser 2005, 122). SGI are increasingly being described as a key element of a particular model of society - the European (Social) Model (Commission of the European Communities 1996). This European Social Model is built around the concept of European citizenship, and combines a dynamic market with cohesion and solidarity. This linking of SGI with the European Social Model inevitably leads to political scepticism about the concept by some groups (House of Lords European Union Committee 2004), and joy in others (e.g. trade unions). This is also reflected in the increasing use of the concept ‘services of general interest’ rather than ‘services of general economic interest’. The 2007 communication from the European Commission explicitly states that “These services are essential for the daily life of citizens and enterprises, and reflect Europe’s model of society. They play a major role in ensuring social, economic and territorial cohesion throughout the Union and are vital for the sustainable development of the EU in terms of higher levels of employment, social inclusion, economic growth and

environmental quality” (Commission of the European Communities 2007, 3). Such a phrase would have been unheard of in the 1980s.

### What do These Changes Mean?

#### The General Interest and the Role of the State

When discussing the French concept of *service public*, we indicated that its prime function is to legitimise the state’s intervention in society and the economy. The argument is that, if a public interest can be identified, a mandate is created for government to intervene or regulate.

Patterns of state intervention in society differ widely. Governments in some countries deliver services that would elsewhere not be seen as falling within the remit of government. A good example is the sale of alcohol through a government alcohol retailing monopoly, such as the Swedish *Systembolaget* system, and similar practices in other Scandinavian countries and many Canadian provinces, or *ABC* (Alcohol Beverage Control) *Stores* in some states in the US. There is also the -disputed and probably untrue- story of Solon the reformer in ancient Athens who is said to have established state-owned brothels in Athens around 594BC with (low) regulated prices to Greece to alleviate social tensions. A somewhat more recent discussion is whether governments ought to assure that every citizen has access to the internet (Wood et al. 2003).

Changes in the notion of public service therefore reflect our changing conception of the role of the state. When Arterburn reviewed the historical roots and evolutions of the common callings doctrine, he found that the use of the concept reflected a certain attitude towards public intervention, ranging from 13<sup>th</sup> century

paternalism and the rise of ‘common callings’, to a situation of “laissez faire policy and extreme individualism” in the 17<sup>th</sup> and 18<sup>th</sup> centuries (Arterburn 1927, 411). The concept of SGI finds much of its roots in the public service and common callings doctrines, and the changes in the SGI concept are strongly related to changes in the European model. Some have already described a common vision of SGI as one of the pillars of the European (social) model (Marti, Schmidt, and Springer 2004, 75). Certain public values are seen as part of one’s country’s identity (Denoix de Saint Marc 1996), and the European approach to SGI may tell us something about the European political and social model.

#### The General Interest Beyond the Public Sector

The concept of public service does not just refer to services organised by the public sector, but is also used as a general principle applying to certain private services. Likewise, several services we would now see as private services were comprised under the common callings doctrine. The debate on ‘essential services’ is not just about typical public services. The SGI debate quite early on moved away from the publicly owned/privately owned dichotomy, and started to focus on the nature of the service instead (Scott 2000, 312; Behrens 2001). Indeed, most SGI discussed in this article typically operate at the intersection of market and government, of private and public. Debates on e.g. rural sustainability or community cohesion highlight the value of services such as local shops, petrol stations, ATMs or banks, which are often seen as ‘essential’ to local communities. Policy initiatives in different countries to make certain services available to all for social reasons constantly shift the focus of the debate. Examples include the provision of cheap or in

some cases free internet connections, free or affordable basic bank accounts, free public transport etc.

### Drivers of Change

There is “no such thing as a public service by definition” (Supiot 1998, 161). That what is ‘of general interest’, or ‘essential’ is open to constant challenge. There are no reasons why bakeries or banking services could not suddenly be deemed essential and thus to be guaranteed to all citizens (Supiot 1998, 162). What public services or aspects of public services are exactly ‘of general interest’ or ‘essential’ is disputed. While there is some consensus on the concept of SGI, the concept is constantly changing (De Bruijn and Dicke 2006; Obermann, Hall, and Sak 2005). The European Commission itself speaks of universal service as an evolutionary concept. It is “a flexible concept, which evolves gradually”, and which “has to adapt to technological change, new general interest requirements and users’ needs” (Commission of the European Communities 1996, 7). Using vague notions such as “le caractère jugé indispensable de ce service” (Van den Abeele 2005) does little to clarify *why* such a service is deemed indispensable. We know very little about how the general interest in the provision of public services is defined, and about how collective goods become shared concerns (Schnabel 2006). The studies that have attempted to map the consensus about essential services “have been largely ad hoc, thematically or spatially limited or have not been regularly updated” (Higgs and White 1997, 444). Essentiality is necessarily a construct, but the factors influencing its construction have not received much attention.

A first factor is changing technology, and changing socio-economic circumstances. Universal service obligations specifying the number of public telephone booths have become increasingly irrelevant, while debates about universal access to the internet have become much more important. Farriers no longer are common callings, but an argument could be made that petrol stations in remote areas are. While the risks of unfettered competition or unregulated monopolies are real, an overregulation of services of general interest may also result in ‘freezing’ these services and lead to a disparity between guaranteed services, and a society and technology that has moved on (Cremer et al. 2001, 8).

When we were talking about common callings, it was made clear that defining innkeepers or farriers as common callings only made sense within a very specific setting. Once those circumstances disappeared, the need for defining them as ‘of general interest’ also disappeared. Certain duties were placed upon a business because it was “important to the public at the particular time” (Arterburn 1927, 420). No such duties were placed on e.g. carpenters because they operated within a different economic context (Wyman 1904, 158). In the same way, the changing European approach to SGI tells us something about the disappearance of state monopolies, and the increasing transnationalisation of service delivery. The current approach to SGI is a “culturally constructed doctrine, a product of the time and context in which it was devised” (Scott 2000, 312).

Different interests are a second factor influencing our definition of the general interest or essentiality. In a European context this is visible in the Commission’s reluctance to define SGI and instead leave this to the member states. A Commission Communication in 1996 defined SGI “market and non-market services *which the*

*public authorities class* [emphasis added] as being of general interest and subject to specific public service obligations” (Commission of the European Communities 1996, 2), thereby acknowledging that the member states have an important role in the processes of definition, and giving the member states considerable leeway (Behrens 2001). This suggests that the processes of definition are conscious and deliberate processes. This may be an overstatement. Different actors have interests in these processes of definition, and include users, regulators, consumer groups, social movements, unions, etc. (Clifton, Comín, and Diaz Fuentes 2006; Bozeman 2002; Prosser 2000; Héritier 2001). The values, needs, norms and customs of these groups determine whether they define certain public services as ‘essential’ or as ‘non-essential’. In the European context, the attack on liberalisation by a variety of groups, mainly at the left of the political spectre (trade unions, social movements, political parties) should be seen as an important new factor in the process of definition (McGowan 2004). We shall see in the next section that different European countries have quite diverging views on what is the general interest.

## CONTESTED DEFINITIONS OF ‘PERFORMANCE’

### Performance on Non-Market Values

Defining a certain service as ‘of general interest’, ‘public’ or ‘essential’ has implications for the acceptability of using certain criteria in the debate about performance. It takes a service out of the competitive free market framework, and adds a series of new performance criteria to the discussion. Traditional efficiency or cost considerations are not the only factors determining the performance of SGI. Factors such as access, affordability, equity, cohesion, and universality are at least as important in the debate (Héritier 2001; Prosser 2000; Hale and Capaldi 1997). A

definition of performance that is acceptable to the widest possible range of actors would have to be composed of performance values that are multifaceted and even sometimes contradictory. Protecting certain public values comes at a cost, and may require a trade-off with efficiency (De Bruijn and Dicke 2006).

‘Performance’ in an SGI context means safeguarding a combination of economic, social and strategic values, many of which are abstract and polyvalent (Scott 2000, 313). These definitions of performance are not always codified (e.g. in legislation or policy documents) and ‘float’ in policy and society. Some progress has been made at codifying definitions of performance in sectoral universal service obligations (cf. supra), but the overall picture remains one of contradiction and change. This is further complicated by the tendency in the wider SGI debate to combine elements of universal service with discussions about the social imperatives of public services (Verhoest 2000, 595).

Unions and the voluntary and cooperative sector are a particularly vocal group in the debate about the definition of performance in an SGI context. *Collectif SSIG* ([www.ssig-fr.org](http://www.ssig-fr.org)), a collective of interest groups from the public sector and the mutual sector (cooperatives, friendly societies, credit unions etc.), recently produced a proposal for a European directive on social services of general interest. An appendix to the proposal provides us with an intriguing alternative set of performance values for social and health services of general interest. The list contains a number of principles that sharply contrast with those promoted in a market approach to public services: Operation in accordance with the principle of solidarity; no risk-based selection of beneficiaries; no link between the real cost of a benefit and the cost to the beneficiary; absence of a profit motive, and reinvestment of profits in the service; equality of

access to high-quality benefits; relationship of proximity between provider(s) and users; ongoing presence in given areas of life; involvement of beneficiaries; participation by volunteers; and identification with a particular territory and/or culture. Some of these elements may be very difficult to measure, and are therefore likely to suffer from better developed notions, such as ‘markets’ or ‘profit’ (Beck Jorgensen and Bozeman 2002)

### National Differences

An added complication to assessing the performance of SGI in the EU is that different member states have taken a different position in the debate on what counts as performance. Different countries have “radically different approaches to public service and different degrees of attachment to public service values” (Prosser 2005, 122). The values stressed in the debate, and the strategies followed to regulate the various aspects of performance differ widely. In contrast to the continental approach, which focuses primarily on social-economic rights and social solidarity, the Anglo-Saxon approach focused on competition law, efficiency and consumer choice.

What is meant by general interest tends to be slightly different in the different EU member states. The early British emphasis on individual consumer rights was originally quite peculiar, but has now also influenced conceptions elsewhere (EIPA and Présidence luxembourgeoise 2005, 61-2). The debate on, and also the use of the concept SGI, is very much dominated by a small group of countries, notably France and Belgium. While all countries have certain “public values that trump competition law” (Prosser 2005, 34), these are not necessarily the same everywhere, and the value balance may be quite different. The preferred procedure for safeguarding these values is also quite different. While countries such as France and Italy have focused on the



establishment of broad legal principles, the UK has tended to defend public values through political means, and through exercising a high level of political discretion. Yet, the UK has in recent years also moved towards a much more legal approach (Prosser 2005, 94).

In France, *service public* is a concept at the core of the administrative system (EIPA and Présidence luxembourgeoise 2005, 53). It is, as we have shown, not strictly defined, but it provides policy makers with a number of general principles that still leave room for discretion. Elsewhere, such as in Southern Europe, Belgium or Austria, some concept of public service exists as well, but its role is less prominent. In many other countries, such as the Anglo-Saxon and Scandinavian countries, Germany, or the Netherlands, 'public service' is not an established concept (EIPA and Présidence luxembourgeoise 2005, 51-2). The approach to regulating SGI has therefore been quite different. Especially the Northern countries and common law countries have tended to take a more pragmatic approach. Their approach is not based on a broad framework, but on specific sector-based regulation.

Because of these country-level differences, the European Commission has long kept at a distance. It should not come as a surprise that the European Commission has frequently mentioned that harmonization may not be feasible or desirable, and some countries, such as Germany, have explicitly stated that establishing a clear definition of SGI and their performance at a European level is undesirable because doing so would violate the subsidiarity principle (Van den Abeele 2005, 57). The European Parliament likewise decided it was not desirable to define SGI and public service obligations, and was of the opinion that only general principles could and should be established (Van den Abeele 2005, 43). This is not only a

discussion about whether certain SGIs are really of general interest, or about the definition of performance in an SGI context. First and foremost this is a discussion about the role of the state in society (Prosser 2005, 34). Linking the debate on SGI to the 'European Social Model' clearly promotes certain values in the debate, and may prove to be crucial in the definition of performance.

## RANKING THE PERFORMANCE OF SGI

### Ranking Undefined Performance

Thus, SGI operate in an environment where definitions of performance are essentially disputed and permanently shifting. Comparing performance, and especially comparing performance using a single ranking, requires some common ground (see also Bouckaert (2008) in this collection). As we have shown in this article, there is a great deal of consensus, but this is mainly a consensus about general principles, not about the specifics. Without clearly specifying what is meant by 'solidarity', 'social cohesion', 'territorial cohesion', or other public values, measuring and comparing SGI's performance on these criteria will be difficult.

If rankings of SGI would therefore be developed, there is a real risk that they only take the well-defined aspects of performance into account. This can happen in two ways. One is only to look at the non-controversial elements and the lowest common denominator of performance, and thereby ignoring the elements on which the consensus is low. Another way is to ignore many of the discussions, and to devise a ranking that is clearly propagating a specific view of performance (see, for example, Arndt (2008) in this issue). Or better, someone's view of performance. A ranking system developed from an Anglo-Saxon perspective will therefore probably give more attention to individual consumer rights, while a French- or Belgian-style ranking

would emphasize social solidarity values. Doing so would politically be very sensitive in an EU context (European Parliament 2003).

Different parties would define performance in different ways. This need not be a problem when measuring and comparing specific aspects of performance. But it is problematic when constructing rankings. Rankings typically reflect a general assessment of performance, and they are therefore very dependent on those aspects of performance that have and have not been included in the determination of the final score. Therefore, while basic performance information on SGI is already collected for horizontal evaluations (Commission of the European Communities 2002), there is a great deal of hesitancy to move towards overall rankings. Introducing a ranking could be interpreted as an attempt at *imposing* a certain definition of performance. It is perhaps for the latter reason that in the European White Paper on SGI, the Commission acknowledged that “Member States are primarily responsible for defining what they regard as services of general economic interest on the basis of the specific features of the activities” (Commission of the European Communities 2001, 8). Indeed, the Commission is using quite vague and nebulous phrases and concepts such as *universal services*, *affordable prices* and *high quality*. In doing so it avoids criticism about its own role in shaping the definitions. At the same time, however, some have regarded this as a deliberate strategy to facilitate a gradual EU encroachment upon this policy domain (House of Lords European Union Committee 2004, 13).

### Changing the Definition of Performance

Performance measurement systems, including ranking and rating systems, have a tendency to focus on the easy-to-measure elements of performance (Smith 1990). In the absence of generally accepted definitions of what services are essential and ‘of general interest’, and the disagreement about what performance means, there is a real risk that less well-defined elements of performance will suffer in a ranking exercise. The survival of non-economic values of public service delivery may therefore depend on a codification and explicitation of these latent values. By making certain aspects of performance more explicit, it becomes easier to include them in a ranking scheme.

Because of their prominence, rankings probably do more than just measure performance. Because of the changing nature of what we consider as performance in a SGI context, a ranking scheme may contribute to stabilising a certain definition of performance. As such, rankings help to strengthen definitions of performance, and indeed almost create performance. For this reason, moving towards a ranking scheme may be a political masterstroke in the process of performance-definition. Ranking is thus not a harmless exercise, because the ranking, when successful, acts as a key identifier of the preferred definition of performance.

This also has implications for public administration research. Rankings create an appearance of consensus on performance. They provide the researcher with easily accessible and highly standardised sets of data, and create an illusion that the entire performance can be known through these indicators (Van de Walle and Roberts 2008; Bevan and Hood 2006). This may redirect researchers’ attention to the ranked elements of SGI performance, and distract attention from those aspects of public

service organisation that fall outside the scope of the dominant definition of performance.

Numbers and rankings have become an important language in the policy debate. This has implications for how we can talk about SGI and the values we consider important with regard to these services. While we may feel that ‘certain things cannot be measured’, we will probably have to measure and quantify them in order to guarantee them a place in the debate on SGI reform. As we have shown in this article, conceptions of what services are public are not stable and change under the influence of changing societal and technological conditions, legal precedents, and the various parties involved in the debate. Therefore, the debate is less about finding the most appropriate measurement and ranking scheme than it is about using the ranking schemes to promote a certain understanding of what is ‘good’ performance. Making implicit values of public service delivery explicit by developing alternative indicators may have a very strong impact on future evolutions in the debate.

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