SEMINAR 8: THE FREEDOM TO PROVIDE SERVICES – Article 56 TFEU

Reading
Barnard, 3rd edition, Ch11 up to p 385
The Services Directive 2006/123 OJ 2006 L375/26

1. Introduction
Van Binsbergen, Case 33/74 [1974] ECR 1229
Luisi & Carbonne, Case 286/82 and 26/83 [1984] ECR 377 (personal scope – receive services)
Alpine Investment, Case C-384/93 [1995] ECR I- 1141
Cowan v Le Tresor Public, Case 186/87 [1989] ECR 195

What are the rights conferred on service providers and receivers?
- Art 56 TFEU

2. The Services Directive 2006/123
- Background, exclusions (eg Recital 22: health care and pharmaceutical services) and non-economic activity; goods and non-discriminatory rules of the game. More specific exclusions to be found in Arts 2(2) and 2(3); eg SGIs; financial services; electronic communication services and networks (eg voice telephony and email conveyancing services); temporary work agencies and private security services (eg bodyguards and surveillance of property as well as the depositing, safekeeping, transport and distribution of cash and valuables); services in field of transport including port services falling within the Transport Title of the Treaty; social services relating to social housing, childcare and support of families and persons permanently or temporarily in need. NB audiovisual services and gambling excluded. Art 2(3) excludes field of taxation.
- Scope of the Directive: material, personal (excludes third country nationals as providers but not as recipients) and territorial

Meaning of ‘Services’
Article 57 TFEU and Art 2(1) and art 4(1) Dr.

‘Services shall be considered to be ‘services’ within the meaning of this Treaty where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedoms of movement of goods, capital and persons’
- Self-employed
- Economic activity (excludes Services of General Interest (SGIs) eg defence services – contrast with Services of General Economic Interest (SGEIs) eg telecommunications and transport (although subject to derogations)
• ‘referred to in Art 57’


*Schindler*, Case C-275/92 [1995] 1 CMLR 4 (excludes goods! But less clear re services ancillary to the goods eg retail, maintenance and after-sales services)

**Points**

(a) remuneration need not come from recipient

*Bond van Adverteeders*, Case 352/85, [1986] ECR 2085

(b) service provider must have a profit motive

*Belgium State v Humbel*, Case 263/86 [1988] ECR 5365 (material scope)(contrast with *Grogan*, below)

(c) Medical Treatment (Services Directive not cover health)

*Luisi & Carbone* (cited above)

*SPUC v Grogan*, Case C-159/90 [1991] ECR I-4685 (abortion services)


**Requirements, restrictions and barriers**

Art 4(7) Dr. …… very wide definition will encounter similar problems ot goods ie *Dassonville, Vassis, Keck* case law??

3. **Article 56 and non-discriminatory provisions**


4. **Services offered by Lawyers**

Directive 77/249, OJ 1977 L78/17


5. **The Limits to the Freedoms**


*Graf* C-190/98 [2000] 1 CMLR 741

**EXCEPTIONS TO THE FREEDOMS**

**Reading**

Barnard Ch 14

1. **Treaty Exceptions**

Art 2(2)(i) of Dr.

Article 45(3) TFEU – “subject to the limitations justified on grounds of public policy, public security or public health.”

Article 45(4) TFEU– public service

Other limitations: justifications & proportionality

Article 62 TFEU – provisions of Articles 51-54 TFEU apply to services
2. **Case-law**

- *Rutili* Case 36/75 [1975] ECR 1219
- *Van Duyn v HO*, Case 41/74 [1974] ECR 1337

**Criminal Convictions:** ‘previous criminal convictions shall not in themselves constitute grounds for invoking the limitations.’

- *Bouchereau* Case 30/77 [1977] ECR 1999
- *Bonsignore* Case 67/74 [1975] ECR 297

**Public Health**

Article 4 and annex

**Procedural rights when exceptions invoked**

Articles 5-9 of Directive 64/221 – [Articles 8 & 9 concerned with the right to challenge the decision]

Article 8 – same legal remedies as are available to a national


3. **Public Service Proviso**

Article 45(4) ‘The provisions of this Article shall not apply to employment in the public service’

- Narrow interpretation (see under Workers)