



Ministry of Science  
and Higher Education  
Republic of Poland

The creation of the English-language version of these publications is financed in the framework of contract No. 768/P-DUN/2016 by the Ministry of Science and Higher Education committed to activities aimed at the promotion of education.

YEARBOOK  
of ANTITRUST  
and REGULATORY  
STUDIES  
[www.yars.wz.uw.edu.pl](http://www.yars.wz.uw.edu.pl)

Peer-reviewed scientific periodical,  
focusing on legal and economic  
issues of antitrust and regulation.  
Creative Commons Attribution-No  
Derivative Works 3.0 Poland License.



Centre for Antitrust and Regulatory Studies,  
University of Warsaw, Faculty of Management  
[www.cars.wz.uw.edu.pl](http://www.cars.wz.uw.edu.pl)

**Łukasz Grzejdziak, *Regulacja finansowania usług publicznych w Europie*  
[*Regulation of Financing Public Services in Europe*],  
Wolters Kluwer Business, Warsaw 2015, 563 p.**

The reviewed book, *Regulation of Public Services Financing in Europe* by Łukasz Grzejdziak, explores the legal approach to the admissibility of state aid granted to undertakings entrusted with the provision of services of general economic interest (hereafter, SGEI). The publication analyses also the broad concept of public services. The author does not limit himself to the mere assessment of the legal orders in chosen EU Member States – issues covered in the reviewed book focus primarily on the output of *acquis communautaire* (*unionaire*) with reference to a number of cases dealt with by EU courts and the decisional practice of the European Commission. The choice of the subject matter merits particular approval in light of its topicality, its significance for the economies of individual EU Member States as well as its legal complexity (multiple aspects are considered). Spanning over 500 pages, the book is extensive and the various issues presented therein have been given equal attention.

The topic of the book focuses, on the one hand, on the provision of public services, the rendition of which is an obligation governed by both EU law and national legislation of individual EU Member States. From the point of view of economic viability, the perfect solution would be to regulate SGEI by way of ensuring free-market conditions for their provision. However, this is often not possible and so special instruments exist to support entrepreneurs who render SGEI. Hence, on the other hand, rules on competition and the admissibility of state aid apply to the financing of SGEI by enterprises. For this reason, the freedom of Member States to establish their own rules on the provision of SGEI is limited. In the framework of pursued socio-economic policy, a Member State regulates its market – imposing obligations to render SGEI, establishing the rules for their provision and ensuring their financing. The latter should, however, comply with competition and state aid rules. Combining these two planes is particularly interesting with regard to the research perspective used, and this approach lends great potential to the chosen topic. [unclear, pls revise of delete]

The book structure is well thought-out. The Author has availed himself of relevant current literature. He has succeeded in covering all of the issues that fall within the scope of the chosen topic – the application of competition rules to the financing of SGEI with state funds. The book has 10 chapters which may be divided into two broader thematic areas. Each chapter offers a summary, as well as the Author's assessments and conclusions regarding the specific matter covered therein. The first

thematic area extends over chapters 1 to 3, which focus on the notions of state aid and public services. The first theme constitutes an introduction to more specific aspects of competition law covered in the later sections of the book. The purpose of the first part is thus to explain key legal concepts related to state aid and the provision of public services. It explores the fundamentals of state aid, its admissibility and its supervision by the European Commission. The second thematic area (chapters 4 to 10) concerns the regulation of SGEI in light of EU law, including the application of Article 106(2) TFEU in its scope related to rules on competition. This thematic area offers a historical analysis of how the doctrine on the financing of SGEI has been shaped over time. The book examines here the development of the jurisprudence of the Court of Justice of the EU as regards the assessment (from the point of view of state aid and SGEI financing) of the application of Treaty provisions by the European Commission. It also scrutinizes Commission decisions and, ultimately, the rules it adopted on the financing of SGEI and the granting of state aid in the form of SGEI compensation. With respect to the historical assessment method used by the Author, I am of the opinion that it has great cognitive value, as it enhances the understanding of the adopted rules and methods of interpreting the Treaty. Binding rules on the financing of SGEI are discussed towards the end of this thematic area. The last chapter offers a summary of how the interpretation of EU rules pertaining to the application of competition rules to SGEI financing came to be. It also provides a recap of the relevant provisions currently in force.

The choice of the applied research methods (dogmatic, comparative and historical) is commendable. The conclusion that such an approach (historical) is both correct and sound stems from two facts. First, it makes it possible for readers to trace back the development process of current institutions from a dynamic perspective. Second, it is a *sine qua non* condition for the understanding and proper interpretation of the law presently in force. Without historical knowledge on the origins of the interpretation of Article 106(2) and Article 107 TFEU, it is impossible to grasp the current legal and interpretative framework. This is particularly evident as regards the approach to the problem of whether providing compensation for SGEI constitutes state aid. This interpretation has undergone major changes – starting from the inference that compensation is a cost refinanced by the State, and as such does not constitute state aid, to the determination that it actually does. Ultimately, following the Altmark judgement, a set of criteria was established that must be satisfied in order to enable the provision of compensation for SGEI. Along with these criteria, a regulatory package was adopted specifying in which cases such financing would be subject to the state aid notification duty. At the same time, granting support based on the Altmark criteria raises doubts and criticisms. This is so especially with reference to Altmark's 4<sup>th</sup> condition referring to the fact that 'non-tender' financing of compensation must not exceed the average costs of a well-run undertaking that is adequately equipped to provide the public service.

Specific issues on the financing of SGEI, although explored in detail in numerous articles and parts of larger publications on state aid, have not yet been comprehensively covered by literature. The reviewed book certainly fulfils this demand. Public services

have a very broad scope; this work is thus likely to be of interest to a wide range of readers. It covers, among others, granting aid for the provision of network services (postal, energy, telecommunication sectors, etc.), banking services, media services, and others.

Considering the above, I conclude that the monograph by doctor Łukasz Grzejdziak entitled *Regulation of Public Services Financing in Europe* covers significant issues, thus far only partially identified by literature of this subject, that concern the financing of SGEI from public funds. Due to its innovative nature and historical approach, as well as the clear communication of this complex subject matter, I highly recommend this publication.

***Prof. Aleksander Werner***

Department of Administrative and Financial Corporate Law

Warsaw School of Economics

awerne@sgh.waw.pl