THE CONCEPT OF GOODS IN THE CASE LAW OF THE COURT OF JUSTICE[1]

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Abstract: *Fish are goods, as well as televisions and DVDs with films. Those examples are simple, but what about the rights for fishing, films transmitted by television signal, or electricity, are they goods or services? The line between these two concepts is not always clear. Is the distinction between goods and services necessary? The introduction of this article examines whether and why there is a need to distinguish goods and services. The second chapter will focus on the definition of goods in the Treaty of the Functioning of the European Union[2] (hereinafter the Treaty) and in the case law of the Court of Justice (hereinafter the Court). The differences between goods and services will be described in the third chapter illustrated with some examples. The conclusion will provide a simple guideline on how to subsume a case under the Treaty provisions on free movement of goods or services and examine whether the above-mentioned definition is still valid nowadays.*

Keywords: *definition of goods, free movement of goods, free movement of services*

1. INTRODUCTION

The internal market of the European Union includes four fundamental freedoms, free movement of goods, services, persons and capital, which are covered by different articles in the Treaty. Thus, while treating a case with a free movement aspect, one of the first steps is to determine whether the case is related to goods, services or other freedoms. However, besides the need to establish a legal basis of the case, is a distinction between goods and services really necessary?

According to Jukka Snell, there is no reason, from an economic point of view, for treating freedom of goods and services differently. From a legal point of view, two similar things should be treated in the same way.[3] Similarly, the Court has, in some cases, a uniform approach to fundamental freedoms, as for example in the *Gebhard* case.[4] This case addressed a situation when a German lawyer pursued his business activities in Italy on a permanent basis using the title *"avvocato"*. Even though the Court subsumed the case under the provisions relating to the right of establishment, it stated that *"national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfill four conditions: they must be applied in a nondiscriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what*

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[2] Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the EU C326/47, 26 October 2012.

[3] See SNELL, J. *Goods and Services in EC Law: A Study of the Relationship between the Freedoms.* New York: Oxford University Press, 2002, p. 15.

[4] Judgment in Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, C-55/94, EU:C:1995:411.

is necessary in order to attain it".[5] Therefore, as the Court has the same approach to all four freedoms, one could say that it's not necessary to distinguish one form another. However, this is not true, because there are several differences between them.

As the extent of this article does not allow describing all the four fundamental freedoms in detail, we will focus on the free movement of goods and it's difference against services. Firstly, Jukka Snell considers that there is a real difference in the methods of regulation and their intensity between goods and services. More regulating measures are to be justified on the grounds of consumer protection in the case of services. Therefore the harmonization process in the service sector would be more intense than in the case of goods.[6]

Secondly, there is a difference in the role of nationality. Only nationals of Member States may rely on the provisions on the free movement of services. However, for the application of the provisions on goods, the criterion is the origin of the product, not the nationality of the owner.[7]

Thirdly, there is a difference in the application of the *Keck* case.[8] According this ruling, if the case concerns a national provisions restricting or prohibiting certain selling arrangement of goods, which is not discriminatory in law or in fact, it is not such as to hinder trade between Member States and the case fall outside the scope of Article 34 (former Article 30) of the Treaty.[9] According to Peter Oliver, this cannot be applied on services.[10]

Lastly, according to Rosa Greaves, the compatibility of the restriction with the EU law may be tested, in the absence of a cross-border element, only with regard to the free movement of goods.[11]

2. DEFINITION OF GOODS

Regarding the expression of *goods*, it should be noted that the Treaty and the Court case law sometimes use other terms, such as *products*[12] or *objects*[13]. Other languages, as for example French and Czech, indicate the same difference.[14] Peter Oliver considers that the distinction of expressions in the Treaty *"appears to owe more to a desire to ring the changes*

[5] Judgment in Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, ECLI:EU:C:1995:411, paragraph 37.

[6] See SNELL, J. *Goods and Services in EC Law: A Study of the Relationship between the Freedoms*. New York: Oxford University Press, 2002, p. 19.

[7] Judgment in Sociaal Fonds voor de Diamantarbeiders v Brachfeld and Others, C-2/69 and C-3/69, ECLI:EU:C:1969:30, paragraph 24/26.

[8] Judgment in Keck and Mithouard, C-267/91 and C-268/91, EU:C:1993:905.

[9] Judgment in Keck and Mithouard, EU:C:1993:905, paragraph 16 and 17.

[10] See OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.35.

[11] See GREAVES, R. Advertising Restrictions and the Free Movement of Goods and Services. *European Law Review*. 1998, Vol. 23, No. 4, p. 305.

[12] The term "product" is mentioned for example in Articles 28 (2) and 29 of the Treaty.

[13] Judgment in Commission v Belgium, C-2/90, EU:C:1992:310, paragraph 26 (Wallonian waste case).

[14] The French version of the Treaty uses "marchandises" and "produits", the Wallonian Waste case "objets". Czech version of the Treaty mentions "zboží" and "výrobky". The Wallonian Waste case has not been officially translated into the Czech language.

than to convey any difference of meaning".[15] Jukka Snell confirms this opinion. According to him, the words *goods* and *products* are used interchangeably. Moreover, the concept of *goods* has the same meaning in all of the Treaty provisions.[16]

2.1 The Treaty

The Treaty specifies in Articles 28 (2) and 29 *products* to which the prohibition of customs duties and quantitative restrictions between Member States apply. On one hand, they apply to all products originating in Member States. On the other hand, they also apply to products coming from third countries, under the condition that the import formalities have been complied with. However, the Treaty does not define the terms *goods* or *products* themselves.

Since there is no general definition of goods, which could be used to classify if a case fale within the scope of application of the Treaty provisions on goods or services, the focus has to be put on the case law of the Court.

2.2 It all began in Italy

The Court provided the first general definition of goods in 1968 in *Commission v. Italy* case.[17] In this case, the Commission asked Italy to abolish the tax on exportation of articles having an artistic, historic, archaeological or ethnographic value. Italy did not do so, claiming that the national law applied only to a specific category of goods. They argued that export restrictions could be justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value (according the exemption clause). Therefore the above-mentioned objects could not be, according to this Member State, considered as ordinary consumer goods and the provisions on customs union did not apply in this case.

At first, the Court had to specify the scope of application of a Treaty provision on customs union and define the term of goods. According this ruling, goods are:

"products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions".[18]

Therefore the articles of an artistic, historic, archaeological or ethnographic nature fall under the concept of goods and under the provisions on customs union.[19] According to Peter Oliver, if the Court reached the opposite conclusion, it would have deprived the exemption clause of all meaning.[20]

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[15] OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.02.

[16] SNELL, J. *Goods and Services in EC Law: A Study of the Relationship between the Freedoms*. New York: Oxford University Press, 2002, p. 4.

[17] Judgment in Commission v Italy, C-7/68, EU:C:1968:51.

[18] Judgment in Commission v Italy, EU:C:1968:51.

[19] Italy could not justify the contested national law by the exemption clause, because the exemption clause has been related only to the quantitative restrictions and not to the provision on abolition of customs duties. (Judgment in Commission v Italy, EU:C:1968:51.)

[20] See OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.03.

Even though the definition of goods was provided in connection with the provisions on customs union, the Court used it in other cases as well.[21] This fact indicates that the concept of goods has the same meaning under all the provisions on free movement of goods.

2.3 Belgians do not want the waste from other countries

In light of the *Commission v. Italy* case, the goods are products having commercial value, i.e. positive commercial value. However, some experts wonder whether products with negative value could be regarded as goods within the meaning of the treaty as well.[22] This question was answered in *Commission v. Belgium* case (known as the *Wallonian waste* case).[23]

This case took place in the Belgian Region of Wallonia, which imposed a total ban on the storage of waste from foreign countries or other regions of Belgium. The Belgian Government argued that non-recyclable waste had no intrinsic commercial value, could not be a subject of a sale and thus could not constitute goods.

The Advocate General Francis G. Jacobs did not agree with the Belgian Government's argument. According to his opinion, even though the non-reusable or non-recyclable waste has no intrinsic commercial value, it has a negative commercial value. Therefore, *"goods for the purposes of the Treaty must be taken to include any movable physical object to which property rights or obligations attach (and which can therefore be valued in monetary terms, whether positive or negative)"*.[24]

The Court arrived at the same conclusion as the Advocate General. However, instead of using the argument about the negative value of the non-recyclable and applying the criterion "products which can be valued in money" used in the definition of goods in *Commission v. Italy*, the Court simply created a new definition according to which

"objects which are shipped across a frontier for the purposes of commercial transactions are subject to Article 30 [now article 34]*, whatever the nature of those transactions"*.[25]

The Court explained its decision to include the non-recyclable waste under the term of goods by the difficulty of the distinction between recyclable and non-recyclable waste. According to the Court, it would be difficult to apply the distinction in practice, especially with respect to controls at frontiers. The Court also pointed out that the question whether the waste was recyclable or not depended on variable factors, as the cost of the recycling process and the viability of the proposed reutilization. Furthermore, the possibility of recycling the waste was liable to change according to technical progress of each Member State.[26] All these factors would change the meaning of the "recyclable waste" in these

[21] See for example judgment in Vlaamse Dierenartsenvereniging and Janssens, C-42/10, EU:C:2011:253, paragraph 68; judgment in Commission v Greece, C-65/05, EU:C:2006:673, paragraph 23.
[22] For example OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.07.
[23] Judgment in Commission v Belgium, EU:C:1992:310.
[24] Opinion in Commission v Belgium, EU:C:1991:344, paragraphs 16 and 18.
[25] Judgment in Commission v Belgium, EU:C:1992:310, paragraph 26.
[26] Judgment in Commission v Belgium, EU:C:1992:310, paragraphs 23 and 27.

states. The objects, which fall under the scope of provisions on free movement of goods, would therefore differ from one Member State to another.

3. GOODS OR SERVICES? THE COURT ANSWERS

This chapter will analyze cases that may seem ambiguous as to the classification of the freedom under which they should be examined, i.e. free movement of goods on the one side and free movements of services on the other side.

3.1 Definition of services

While the expression of *goods* is not defined in the Treaty, the notion of *services* is. The definition has two parts. First part of the definition states that services are *normally provided for remuneration*. The second part is a negative definition: services are, according to the Treaty, a residual category. They are considered to be services *"in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons"*.[27] Even though the Treaty lists some examples[28], according to Fiona Smith and Lorna Woods, it *"does not outline the characteristics of services as a general concept"*.[29]

The concept of services is also defined in the Directive on services in the internal market. For the purposes of this directive, the service is defined as *"any self-employed economic activity, normally provided for remuneration"*.[30] Even though this definition is legally binding only for the purposes of this directive, it may help to understand the very concept of services. This is confirmed also by the objective of the directive, which is to facilitate the exercise of freedom of establishment for service providers and the free movement of services itself.

Regarding the differences between *goods* and *services*, Fiona Smith and Lorna Woods indicate that the key to the definition of goods in the jurisprudence of the WTO is the transfer of property. Unfortunately, this approach is not to be found in the Courts case law.[31]

According to Jukka Snell, the difference between goods and services is that the first one has a material and the other one non-material nature.[32] Similar opinions have Fiona Smith and Lorna Woods. According to them, the use of the word *object* implies the tangible nature of the product.[33] The same conclusion may be indicated also by the Consumer Rights

[27] Article 57 of the Treaty on the Functioning of the European Union, Official Journal of the EU C326/47, 26 October 2012.

[28] According to the Treaty: *"[s]ervices shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions"*. (Article 57 of the Treaty on the Functioning of the European Union, Official Journal of the EU C326/47, 26 October 2012.)

[29] See SMITH, F., WOODS, L. A distinction without a difference: Exploring the boundary between goods and services in the WTO and the EU. *Yearbook of European Law*. 2005, Vol. 24, No. 1, pp. 463–510.

[30] Article 4, paragraph 1 of the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, Official Journal of the EU L 376/36.

[31] See SMITH, F., WOODS, L. A distinction without a difference: Exploring the boundary between goods and services in the WTO and the EU. *Yearbook of European Law*. 2005, Vol. 24, No. 1, pp. 463–510.

[32] See SNELL, J. *Goods and Services in EC Law: A Study of the Relationship between the Freedoms*. New York: Oxford University Press, 2002, pp. 23–24.

[33] See SMITH, F., WOODS, L. A distinction without a difference: Exploring the boundary between goods and services in the WTO and the EU. *Yearbook of European Law*. 2005, Vol. 24, No. 1, pp. 463–510.

Directive, which describes *goods* as *"tangible movable items"*.[34] To prove or disprove this distinction between goods and services, several following cases of the Court will be analyzed.

3.2 TV and TV signals

One of the first cases, which deal with the difference between goods and services, is the *Sacchi* case.[35] In this case, Mr. Sacchi had several televisions, which received a cable signal and were accessible by public. However the Italian law granted the television broadcast monopoly to Radio Audizione Italiana and prohibited other persons or companies from receiving television signals for the purpose of their retransmission. In his defense, Mr. Sacchi argued that the Italian law was not in conformity with the community law.

According to the Court *"it is not ruled out that services normally provided for remuneration may come under the provisions relating to free movement of goods"*.[36] Moreover, the physical medium for the signals (as for example *"material, sound recordings, films, apparatus and other products used for the diffusion of television signals"*) falls under the scope of free movement of goods.[37] However by reason of its nature and the fact that there is no express provision, the transmission of television signal must be regarded as a service.[38]

Six years after the *Sacchi* case, the Court confirmed its ruling in the *Procureur du Roi v Debauve* case.[39] In this case several individuals and undertakings were engaged in the diffusion of cable television and accused of infringing the prohibition on advertising in Belgium. The court in Liège asked the Court if this prohibition is against the provisions on the freedom of services. The Court referred to the *Sacchi* case and stated that *"the broadcasting of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services."*[40]

3.3 Lotteries

In the nineties, the Court was again dealing with the difference between goods and services in the *Schindler* case.[41] Gerhart and Jorg Schindler were independent agents who advertised and organized Class lotteries. They dispatched invitations to participate in lottery from Netherlands to UK nationals. After the envelops were confiscated in Dover on the ground that they had been imported in breach of the English law, the High Court of Justice asked the Court, among other questions, if advertising and sending lottery tickets falls under the provisions on free movement of goods or services.

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[34] Article 2, paragraph 3 of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Official Journal of the EU L 304/64.

[35] Judgment in Sacchi, C-155/73, EU:C:1974:40.

[36] Judgment in Sacchi, EU:C:1974:40, paragraph 6.

[37] Judgment in Sacchi, EU:C:1974:40, paragraph 7.

[38] Judgment in Sacchi, EU:C:1974:40, paragraph 6.

[39] Judgment in Procureur du Roi v Debauve, C-52/79, ECLI:EU:C:1980:83.

[40] Judgment in Procureur du Roi v Debauve, ECLI:EU:C:1980:83, paragraph 8.

[41] Judgement in H.M. Customs and Excise v Schindler, C-275/92, ECLI:EU:C:1994:119.

The Court answered that the described activities are *"only specific steps in the organization or operation of a lottery and cannot, under the Treaty, be considered independently of the lottery to which they relate*"[42]. Thus they have to be regarded as services. Another important element about the *Schindler case* is that while analyzing the distinction of goods and services, the Court described goods as:

"material objects which have been manufactured".[43]

3.4 Electricity

As we saw in the last three cases (Sacchi, Procureur du Roi v Debauve and Schindler cases), providing or receiving a TV signal and advertising and sending lottery tickets are services, i.e. immaterial product or product with an immaterial aspect. On the other side trade with material products (as sound recordings, films, etc.) are goods. Therefore it may seem that the Snell's distinction between goods and services based on the difference of material and non-material products would be correct. However, as it may be surprising, according to the case law of the Court, electricity is a good.

As Peter Oliver wrote, electricity is not tangible, at least not in the normal sense.[44] However, the Court decided in the *Costa v. E.N.E.L.* case[45] that electricity should be treated as goods without explaining why. The Court just stated that an electricity monopole falls under the article which prohibits discrimination regarding the conditions under which goods are procured and marketed (now article 37 of the Treaty).

Only thirty years later, the Court explained why electricity is regarded as goods in *Gemeente Almelo and Others v Energiebedrijf IJsselmij* case.[46]

To support this conclusion, the Court gave three reasons: (i) electricity constitutes goods according to the national laws of the Member States, therefore (ii) was regarded as goods in the Community's tariff nomenclature and (iii) the Court already ruled in this sense in the *Costa v. E.N.E.L.* case.[47]

Five years later, in the Opinion to the *Jägerskiöld* case[48], the Advocate General Nial Fennelly admitted that it might *"appear surprising that the Court has treated electricity, despite its intangible character, as goods*". After repeating the reasons mentioned in the *Gemeente Almelo and Others v Energiebedrijf IJsselmij* case, he concluded that *"electricity must be regarded as a specific case, perhaps justifiable by virtue of its function as an energy source and, therefore, its competition with gas and oil*".[49] According to Peter Oliver, the Advocate General hereby *"acknowledged that electricity constituted something of an anomaly in this regard*".[50]

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[42] Judgement in H.M. Customs and Excise v Schindler, ECLI:EU:C:1994:119, paragraph 22.
[43] Judgement in H.M. Customs and Excise v Schindler, ECLI:EU:C:1994:119, paragraph 23.
[44] See OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.08.
[45] Judgment in Costa v E.N.E.L., C-6/64, ECLI:EU:C:1964:66.
[46] Judgment in Gemeente Almelo and Others v Energiebedrijf IJsselmij, C-393/92, ECLI:EU:C:1994:171.
[47] Judgment in Gemeente Almelo and Others v Energiebedrijf IJsselmij, ECLI:EU:C:1994:171, paragraph 28.
[48] Opinion in Jägerskiöld, C-97/98, ECLI:EU:C:1999:315.
[49] Opinion in Jägerskiöld, ECLI:EU:C:1999:315, paragraph 20.
[50] See OLIVER, P. *Oliver on Free Movement of Goods in the European Union*. 4th Edition. London: Sweet & Maxwell, 2003, paragraph 2.09.

3.5 Fishing rights

The *Jägerskiöld* case, mentioned above, is important for defining the term of goods. This case was about a Finish national Mr. Gustafsson who paid the fishing license fee to the Finnish State and then went fishing without Mr. Jagerskiold's permission in his waters in Finland. Nevertheless, according to the Finish law the right for fishing and decide thereon belonged to the owner of the water. Mr. Jagerskiold brought an action before the national court asking the prohibition for Mr. Gustafsson to fish in the waters belonging to him. Mr. Gustafsson argued that the Finish law, on which the fishing right was based, was contrary to the Treaty provisions on free movement of goods or services.

In the decision, the Court reviewed the *Commission v. Italy* ruling and expressly refused that *"anything which can be valued in money and which is capable, as such, of forming the subject of commercial transactions*" would necessarily fall within the scope of application of provisions on free movement of goods.[51] Then the Court referred the *Schindler* case and explained that organizing a lottery was qualified as a service, because the organizer was letting the tickets buyers participate in the lottery against a payment. The same logic was applied for granting the fishing rights. According the Court *"the activity consisting of making fishing waters available to third parties, for consideration and upon certain conditions, so that they can fish there constitutes a provision of services"*.[52]

Another interesting aspect about this case is that the Court assessed the preliminary questions as admissible. By doing so, the Court even reminded the need for a preliminary ruling in order to enable the national court to deliver judgment and that the questions have to be relevant.[53] However, after answering that the fishing rights or fishing permits do not constitute goods and thus should be treated within the Treaty provisions on services, the Court ruled that these provisions *"are not applicable to a situation, such as that in the main proceedings, which is confined in all respects within a single Member State*".[54]

3.6 When the national measure relates to both

As we have already outlined in the above-mentioned *Schindler* case, sometimes a national measure can relate to both, the free movement of goods and the freedom to provide services. For example, we can ask a question why using a decoding device to receive a satelite signal is treated as service.[55] The anwer to this question is to be found in the Courts decision in the *Premier League* case, also known as the *Murphy* case (the judgment concerns two joint cases).[56]

[51] Judgment in Jägerskiöld, ECLI:EU:C:1999:515, paragraph 33.
[52] Judgment in Jägerskiöld, ECLI:EU:C:1999:515, paragraphs 35 and 36.
[53] Judgment in Jägerskiöld, ECLI:EU:C:1999:515, paragraph 21.
[54] Judgment in Jägerskiöld, ECLI:EU:C:1999:515, second part of the ruling.
[55] For example Lorna Woods and Philippa Watson asks a question why the satelite signal is in the Murphy case (Judgment in Football Association Premier League e.a., C-403/08 and C-429/08, ECLI:EU:C:2011:631) treated as a service, while in the Oracle case (Judgement in UsedSoft, C-128/11, ECLI:EU:C:2012:407), computer software is treated as good. (See WOODS, L., WATSON, P. *Steiner & Woods EU Law.* 12th Edition. Oxford: Oxford University Press, 2014, p. 336.) Unfortunately, in the reasoning of the judgement, the Court doesn't explain why. This may be due to the fact that the case concerns secondary legislation. Therefore the Court focused on other important aspects of the case then the distinction of goods and services, as terms used in the Treaty.
[56] Judgment in Football Association Premier League e.a., ECLI:EU:C:2011:631.

The case concerns the Football Association Premier League, which organizes the filming of Premier League matches and grants licenses for broadcasting live transmission of these matches. The licensee for the broadcasting in the United Kingdom was BSkyB. However, owners of certain pubs, bars and restaurants, as for example Karen Murphy in Portsmouth, decided to use foreign decoding devices to access cheaper satellite signals. After that, Media Protection Services, Football Association Premier League and others brought several cases before the British courts. As one of the preliminary questions the Court had to decide, whether the case falls within the scope of free movement of goods or services.

The Court answered that according to settled case law, it examines the national measure in relation to only one of the two mentioned freedoms, *"if it appears that one of them is entirely secondary in relation to the other and may be considered together with it*".[57] Then the Court admitted that in the field of telecommunications, the two aspects are often linked. However, where the legislation concerns particularly the services provided by the economic operators, while the supply of telecommunications equipment is secondary, it is appropriate to examine this activity only under the provisions of services.[58] The situation would be different, if the national measures concerned decoding devices *"in order to determine the requirements which they must meet or to lay down conditions under which they can be marketed*".[59] Therefore, the Court decided that the case concerned primarily the freedom to provide services, while the free movement of goods aspect was secondary.

4. CONCLUSION: GOODS AND SERVICES IN PRACTICE

In practice, it may be difficult to distinguish goods and services. Jukka Snell explains how these two might be combined. Sometimes a service may have the form of transmission of goods, for example an educational service may be provided by sending goods, such as books, video-cassettes, etc.[60]

The outcome of the analysis provided above is that there is no general definition of goods and services in the Treaty that would clearly mark the border between them. The Treaty does not define goods and services are described as a residual category (service is what does not fall under the provisions on goods, persons and capital).

The case law offers several different definitions, but they vary from case to case and in time. Even the definition, which was provided in Commission v. Italy case and later used by the Court, is not applicable in all cases. The distinction between goods and services based on the difference between material and non-material products seems to be, in most cases, valid. According to the analyses, all material products seems to be goods, however not all goods are material (as for example electricity). On the other side, material products, which are related to some activity, are treated as services. Therefore services seem to be either immaterial or to include some non-material aspect.

[57] Judgment in Football Association Premier League e.a., ECLI:EU:C:2011:631, paragraph 78.
[58] Judgment in Football Association Premier League e.a., ECLI:EU:C:2011:631, paragraphs 79 and 80.
[59] Judgment in Football Association Premier League e.a., ECLI:EU:C:2011:631, paragraph 82.
[60] See SNELL, J. *Goods and Services in EC Law: A Study of the Relationship between the Freedoms*. New York: Oxford University Press, 2002, p. 24.

For example film on a DVD is a good, but distribution of a film by TV signal is a service. Fish in a supermarket is a good, but getting a fish from somebody's water falls under the provisions on services. Articles of artistic or historical value, waste and electricity are goods. On the other side, selling and advertising lottery tickets are service. And if the national measure relates to both, free movement of goods and freedom to provide services, the key aspect is which one is secondary in relation to the other.

The concept of goods is one of the areas with a significant number of judgements. Nevertheless, goods, as well as services, are related to the technological progress of the society. Therefore, in the future, we can expect more case law defining goods and services.