Table of Contents

Preface			xi
List of A	Abbrev	riations	xvii
Acknov	vledge	riations ments emantics of Public Health Systems	xix
Introdu	ction	15V	1
I	The S	emantics of Public Health Systems	1
	[A]	The History of Public Health Systems	1
	[B]	The Geography and Typology of Public Health Systems	3
		[1] Bismarck or Beveridge?	3
		[2] Refund or Benefit-in-Kind Systems?	4
II	Public	Health Systems: What Role for the EU?	5
	[A]	The Primary Law Competence Allocation in the Domain of	
		Health	5
	[B]	The Primary Law Competence Allocation in the Domain of	
		Social Security	6
	[C]	The Primary Law Competence Allocation in the Domain of	
		Common Commercial Policy	7
Part I			
	lling th	ne Demand Side of Public Health Systems: The Patient as a	
	_	a Consumer?	13
WUIKEI	or as	a Consumer:	13
Снартев	2 1		
		a Benefit under Social Security Coordination and the Worker	
as a Par		a benefit affact bootal becarity coordination and the Worker	15
81 01 Social Security Coordination: History Principles and Material Scope			

Table of Contents

§1.02	Social Se	ecurity Coordination and the De-territorialization of	
31.02		re: Regulation 1408/71	19
§1.03		rdination Route as the Tidemark of National Control over	
	Cross-Bo	order Access to Healthcare	22
Снарте	R 2		
Healtho	care as a S	Service under Article 56 TFEU and the Patient as a	
Consur	ner		27
§2.01	As a Pre	requisite: Healthcare as a Remunerated Service within the	
	Scope of	Articles 56 Et Seq. TFEU	27
§2.02	Payment	s for Healthcare as Market-Like Transactions	29
§2.03	The Thre	ee Case Law Generations of Cross-Border Access to	
	Healthca	re	34
§2.04	First Ger	neration-Breaking Down the First Wall: Prior Authorization	
		as Obstacles to the Free Movement Rules	37
§2.05		Generation: Regulating Deregulation and Conducting the	
		of National Healthcare Provision	40
		nigrating from Benefits-in-Kind, Social Insurance Systems in	
		der to Receive Intramural Care	40
	[1		40
		[a] Distinguishing between Intramural and	
		Extramural Care	43
		[b] Scrutinizing the Contractual Arrangements of	
		Benefit-in-Kind Systems	43
		[c] Determining the National Healthcare Basket	44
		[d] Valuing Waiting Time for Treatment	46
	[2	P.] Reaffirming and Reforming: The Case of Müller-Fauré	
		and van Riet	46
		[a] The 'National Argument'	47
		The Actual Findings of the Court	48
		ne Most Archetypal NHS as a Case-Study for Patients'	
		obility: The Case of Watts	51
		The Facts	51
		The Notion of 'Undue Delay'	52
	[3	3] Queue-Jumping on the Basis of EU Free Movement	
		Rights: What about the Classic Social Right to	=-
	Γ.4	Healthcare?	53
	[4		55
	[5	The Extent of Reimbursement	56
Снарте			
		obility Case Law <i>Acquis</i> as a Source of Silent Harmonization	61
§3.01	Introduc	tion	61

§3.02	Patient Mobility: A Case of Regulatory Competition	62
30.02	[A] Regulatory Competition for Extramural Care	63
	[B] Regulatory Competition for Intramural Care	66
§3.03	The Wider Implications of Waiving or Remodelling Prior Authorization	
-	Rules	68
	[A] Prior Authorization Schemes as the Gatekeepers of Territoriality	
	with Regard to Patients' Mobility	68
	[B] Prior Authorization Schemes as the Gatekeepers of Territoriality	
	with Regard to Healthcare Providers' Mobility	70
§3.04	The Services Directive: The Ambivalent Status of Healthcare Therein	
	and the Directive as an Implicit Source of Harmonization	72
§3.05	Public-Private Divide: Institutional or Functional?	78
§3.06	Pricing Healthcare: Fragmenting or Homogenizing Healthcare	
	Systems?	80
§3.07	Third Generation of Case Law: Paving the Way to Directive	
	2011/24/EU	86
Снарте	A 1	
	care Provision for the (Migrant) Patient on the Basis of Secondary	
	From Coordination to Harmonization or Both	91
§4.01	Introduction	91
§4.02	The Aimed Degree of Harmonization	94
§4.03	The Substantial Provisions	97
	[A] The Applicable <i>Lex Fori</i>	97
	[B] National 'Gatekeeping' Measures: The New Battlefield?	98
	[C] The End of the Intramural/Extramural Care Division	100
	[D] 'Public Health' Considerations: Finally Regulated	101
	[E] (Voluntary) Quality and Safety Standardizing: Sowing the	
	Seeds of a Hybrid Regulatory Pattern	104
§4.04	Directive 2011/24/EU on the Application of Patients' Rights in	
	Cross-Bord Healthcare: Some Words of Conclusion	109
D II		
Part II		
	elling the 'Supply Side' of Public Health Systems: The Regulatory	111
anu Ke	edistributory State under EU Law	111
Cvvv	m F	
CHAPTE The Re	gulatory State and the Free Establishment of Healthcare Providers	113
§5.01	Introduction	113
§5.01	The Personal Scope of the Freedom of Establishment	116
§5.02 §5.03	The Material Scope of the Freedom of Establishment	117
§5.05 §5.04	The Case Law of the Court of Justice of the EU in Relation to	117
33.04	Healthcare	110
	III annicali.	11,

	[A]	Formal Qualifications to Be Fulfilled Aiming at the Protection of Public Health and the Observance of Health Standards	119
		[1] Rules Excluding Entirely the Engagement of Commercial Operators	119
		[a] Rules Reserving the Task of Carrying Out Certain	119
		Medical Activities to a Category of Professionals Holding Specific Qualifications	119
		[b] Ownership Rules	120
		[2] Rules Allowing Partially the Participation of Commercial	120
		Operators	124
	[B]	Regulatory Prerequisites for Access to the Net of Subcontracted	124
	[D]	and Incumbent Healthcare Providers Aiming at Healthcare	
		Planning	127
		[1] Regulatory Prerequisites for the Contracting Out of	147
		Healthcare Services	127
		[2] Territorial Distribution Prerequisites for the Access to	121
		the Net of Incumbent Healthcare Providers	134
	[C]	Regulatory Limits on the Legal Form of Healthcare Providers	137
	[D]	Regulatory Measures Restricting Welfare Entities from	157
	[D]	Investing Privately in Another Member State	140
	[E]	Compulsory Affiliation of Individuals to Public Welfare	110
	[2]	Entities Impeding the Establishment of Private Rivals from	
		Other Member States	143
§5.05	Some	e Interim Conclusions	145
Снарте	R 6		
The St	ate as	Insurer and/or Purchaser of Healthcare and the Rules on	
Compe	tition		147
§6.01	Intro	duction	147
§6.02	Com	petitiveness and Health Insurance Systems' Governance	148
§6.03		Predomnant EU Health Insurance Model	155
	[A]	Redistribution versus Capitalization	155
	[B]	The Three Pillars of Social Insurance	156
§6.04	Fund	ling Healthcare: Core Solidarity Activities within the Context	
	of Fi	rst and Second Pillar Social Security Provision as the External	
	Bord	er of EU Competition Law	163
	[A]	The Notion of 'Economic Activity' within the Ambit of EU	
		Competition Law as a Conditio Sine Qua Non for Its	
		Application	163
	[B]	'Imperium' as Opposed to Economic Activity	165
	[C]	Social Solidarity as Perceived and as Elaborated on by the	
		EU Judiciary	166
	[D]	The Criterion of Social Solidarity: A Deviation from the	
		Potentiality Höfner Test?	169

	[E]	The Social Solidarity Rationale: An 'Imperium' Classification	
		in the Area of Healthcare and Social Security?	172
§6.05	Fund	ling Healthcare: The Operation of First and Second Pillar Health	
	Insu	rance Activities under Market Conditions	174
	[A]	Supplementary Optional Social Insurance Funds Operating	
		on the Basis of the Principle of Capitalization	174
	[B]	Supplementary Compulsory Social Insurance Funds Operating	
		on the Basis of the Principle of Capitalization	176
	[C]	Private Second Pillar Health Funds Operating on the Basis of	
		a Risk Community	179
	[D]	Some Interim Conclusions	184
§6.06	Purc	hasing Healthcare: From 'Internal' to 'External' Solidarity?	187
	[A]	Purchasing Activities within Social Insurance Systems: The	
		Case of AOK Bundesverband	187
	[B]	The Purchasing Activities of NHS Systems: The Case of Fenin	192
	[C]	Public Healthcare Purchasing and the Sub-contracting of	
		Ancillary Services: The Case of Ambulanz Glöckner	196
	[D]	Public Healthcare Providers and Purchasers beyond the	
		Financial and Regulatory Field of Social Insurance: Solidarity	
		Decomposed	200
§6.07	Healthcare Provision: A Remunerated Service of Non-economic		
	Char	racter?	204
Conclu	sions	300	211
I	The	Way so Far	211
II		Way Forward	218
Bibliog	ranhv	way so Far Way Forward	221
Table o	of Case	es	237
Table of Legislation and Other Instruments			241
Index			245