



News Letter

2/2007

Observatory for the Development of Social Services in Europe

The Observatory for the Development of Social Services in Europe – 1999 to 2007

The end of 2007 concludes the second project term of the Observatory for the Development of Social Services in Europe. For the next two years, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and the two project operators – the Institute for Social Work and Social Education (ISS) in Frankfurt am Main and the German Association for Public and Private Welfare (DV) in Berlin – have concluded a new project agreement in order to continue their cooperation. We would like to take this occasion to look back on the Observatory's achievements so far.

The starting point

The Observatory was established in September 1999 by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) in order to better assess European trends in social policy and social law and to better represent German interests in this area. The objective of the project was to shed light on the development of social services in Europe – in particular in EU Member States and accession countries. The project was intended to observe and assess national and European debate on the development of public, non-profit and commercial social services. Furthermore, the Observatory was also intended to look at trends

and prospects for professional and organisational development in the area of social services at both national and transnational level.

Main questions

The work of the Observatory has been oriented to the following main issues:

- What are the central cross-national trends, developments and processes in social policy, social economy and jurisdiction at EU level with consequences for the different fields of social work and for providers of social services?
- What repercussions and backwash effects related to trends and developments in other EU countries or at EU level are of relevance for social services and for the actors involved in social work in Germany?
- How can trends in social policy, social economy and professional development be identified and taken into account by service providers?
- What possibilities of impact on political processes are there for providers of social services in Germany?

In the first two or three years, the work of the Observatory focused on research activities comparing the situation in the countries it observed. But the developments of the last few years in Europe have shifted project priority to providing analysis and support for current European processes of policy-making and legislation in the health and social area.

The central advisory and steering body of the Observatory is the Coordination Group. The results of the Observatory's work have been presented to the Group members (and generally later on also to the

Editorial

DEAR READER,

BEFORE THE OBSERVATORY FOR THE DEVELOPMENT OF SOCIAL SERVICES IN EUROPE "GOES INTO EXTRA TIME" IN JANUARY 2008, WE WOULD LIKE TO TAKE THIS OPPORTUNITY TO LOOK BACK ON THE PROJECT SINCE 1999 AND REVIEW THE MAIN ELEMENTS OF OUR WORK.

THE FIRST MAIN REPORT OF THIS NEWSLETTER LOOKS AT THE TOPIC OF SOCIAL SERVICES OF GENERAL INTEREST. IT EXAMINES CURRENT DEVELOPMENTS AT EUROPEAN LEVEL, FOCUSING ON A REPORT ABOUT THE FIRST FORUM ON SOCIAL SERVICES OF GENERAL INTEREST THAT WAS HELD IN LISBON IN MID-SEPTEMBER.

IN THE SECOND MAIN REPORT, HANNA STEIDLE DESCRIBES THE CENTRAL ISSUES AND RESULTS OF A CONFERENCE ON PUBLIC-PRIVATE PARTNERSHIPS IN THE SOCIAL AND HEALTH SECTOR IN EUROPE THAT WAS HOSTED BY THE OFFICE OF THE COORDINATION GROUP. SHE EXAMINES THE CONCEPTS, OPPORTUNITIES AND LIMITATIONS OF THESE FORMS OF COOPERATION AS WELL AS THE NEED FOR REGULATION AT EUROPEAN AND NATIONAL LEVEL.

IN THE COUNTRY REPORT, JÉRÉMIE CAZEUNEUE OF THE FRENCH MUTUALITÉ SOCIALE AGRICOLE DESCRIBES THE SYSTEM OF SOCIAL SERVICES IN FRANCE. HE FOCUSES IN PARTICULAR ON THE DIFFICULTIES EXPERIENCED BY PROVIDERS OF SOCIAL SERVICES IN CONNECTION WITH THE APPLICATION OF EUROPEAN INTERNAL MARKET REGULATIONS.

AND FINALLY, AS ALWAYS, WE INFORM YOU ON NEW DEVELOPMENTS IN THE SOCIAL AND HEALTH AREA IN THE EU, ON CURRENT PUBLICATIONS AND UPCOMING EVENTS.

WE WISH YOU PLEASANT READING!

THE EDITORIAL TEAM



broader professional public). The Coordination Group consisted of one representative of the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and of representatives of the six federal associations of non-statutory welfare organisations, of the central associations of municipal and district governments and of the governments of the German states. In future the Observatory will be supported in an advisory function by the special committee on "International Cooperation and European Integration" of the German Association for Public and Private Welfare.

Topics of interest

The Observatory's project work focuses on the following topics, with special attention paid in the last few years to legal and economic issues relating to personalised social services:

• Fundamental issues

One of the most important of the Observatory's activities on fundamental issues is its contribution to the debate on the future of the European Social Model. This was the subject of a two-day conference hosted jointly by the Observatory and the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in 2005. The main objectives of this conference were to assess the current status of the European Social Model, to explore appropriate policy instruments and discuss their future development.

• Legal aspects

Here the Observatory has taken stock of the European legal framework as it affects the activities of municipal and non-profit social services and facilities. It has also examined the Charter of Fundamental Rights of the European Union and analysed the regulations governing non-profit status in Germany and other European countries within the scope of the overall EU legal and political circumstances.

• Economic aspects

Throughout the entire project term so far, the Observatory has followed the development of social services in their function as a component of services of general interest in the EU. An important aspect of this activity has been support and evaluation of policy processes at EU level in the area of services of general interest and/or social and health services of general interest. The Observatory has involved itself in the debate on the specific

characteristics of non-profit social services. It has examined the Services Directive as an example of the effect of internal market laws on social services. A further issue has been the conditions and factors affecting cross-border health and social services and the forms of networking that have evolved in this field on either side of national borders.

• Civil society

The main issues in this field have been the importance of the welfare federations and the transformations they have experienced in these times of intensified European integration as well as research into European networks of social work.

• The welfare mix

One of the Observatory's tasks in this area has been to compare organisational forms and provider structures of social services for children and the elderly in Western Europe. Forms of user participation in planning, providing and evaluating social services have also been examined.

• Social integration and cohesion

Here the Observatory has examined the role of social services in sustainable social development and looked into what contribution these services can make to fulfilling the mission of social policy and thus achieving one of the Union's political objectives. Another aspect to be highlighted here is the Observatory's work on various issues relating to the Open Method of Coordination.

• EU enlargement

The Observatory has focused primarily on the development of social services in the context of the EU enlargement in Central and Eastern Europe and their role in the transformation process.

Implementation

In implementation of its mandate, the Observatory has carried out smaller projects on individual topics and hosted various professional conferences and expert meetings. Special reports have been commissioned – for instance the survey carried out by Dr. Stephan Schauhoff and Dr. Marc Helios on regulations affecting non-profit status in Germany and other European states in relation to the legal and political framework of the European Union – and their results then evaluated. In addition to reports and analyses within the scope of individual projects, conference papers were prepared for the various events, and a total of fifteen Working Papers have

been published on specific topical issues. The Observatory also publishes a six-monthly newsletter in German and English. It also provides information and consultancy to other professional stakeholders, particularly the welfare federations and other interested parties in the university context (lecturers, students, doctoral candidates etc.).

Since mid-2004, the Observatory has also participated in an informal group of institutions from a number of EU Member States involved in policy observation, analysis and support in the area of social services. The main purpose of this cooperation is an exchange of information on policy processes, on stakeholders and on current trends in the various national contexts.

Overall, this has allowed information, evaluations and recommendations to be shared among participating institutions and other interested professionals, thus improving comparability. This in turn has helped raise professional interest in Germany for the European dimension of social and health policy issues, and it has sensitised the various European stakeholders to the specific characteristics of social services. It has also fostered networking and encouraged exchanges of information among the welfare federations and providers of social services, the umbrella organisations of social NGOs and EU and Council of Europe institutions.

For further information

All important information about the Observatory – a comprehensive project presentation in German and English, a short description of all individual projects and a list of all publications as pdf files – can be found and/or downloaded from the project website at <http://www.soziale-dienste-in-europa.de>. Providing they are still available, hard copies of the individual publications can also be ordered from the Observatory.

*Anna Englaender, Alexandra Schmidler,
ISS e. V*

Quality management in the social and health sector – A disability perspective

In April 2006 the European Commission adopted a Communication on Social Services of General Interest. A specific reference is made in this Communication to the issue of the modernisation and the quality of these services. Indeed, modernisation of services for people with a disability and of social and health services in general is high on the agenda of authorities and policy makers at all levels. Social and health services are a major source of economic growth and job creation. Moreover, they drive and put into practice innovation in the social sector and they are major contributors to social inclusion and social cohesion. At the same time, they are the focus of an intensive quest for quality and effectiveness. It is therefore regrettable that the European Commission chose to split social and health services.

All the Member States have embarked upon modernisation of their social services to tackle the tensions between universality, quality and financial sustainability. Across Europe, there is an emerging and strong tendency to identify quality by the outcomes of a service instead of focusing on the input and the processes. High quality services should facilitate full participation, inclusion in society and full citizenship of the users of the services. This means that the outcome of a service must be evaluated and measured by verifying the impact the service has on the person and the extent to which the service really addresses the needs expressed by the people. This "Quality of Life" approach sets the scene for the evaluation of the quality of a service and for the establishment of good quality assurance systems.

Quality Assurance and Accreditation Systems

European Association of Service Providers for Persons with Disabilities (EASPD) believes the best way for the EU to ensure high quality service provision in Europe is to establish consensus on European quality principles instead of quality standards. Standards give the false impression that quality is a measurable concept. The quality

standards could be implemented on the national or regional level, but at EU level quality principles are the most effective.

We are convinced that the best way to ensure high quality service provision in and across Europe is to adopt quality of life (QOL) principles as the defining values and to apply them to specific national and local levels. QOL principles are universal. What such principles hold dear are elements such as equality, full participation, inclusion, empowerment, creating opportunities, offering choices and supporting service users in shaping their own lives. QOL is about a positive approach towards working with and listening to people with disabilities or service users in general.

EASPD therefore proposes to provide a general framework to assure QOL. The results should not be a fixed set of quality standards but rather directions to an ongoing process of improvement. As a European network, we do not endorse or recommend any specific quality assurance and accreditation system. Promoting one particular system brings the danger of not respecting national and cultural diversity and the size and focus of different organisations.

At the same time EASPD believes that a credible quality management must contain the following elements and principles:

a) **Values**

Such as the right to dignity, equal opportunities, independent living, participation in and contribution to society.

b) **Quality of life for all**

Quality of life should be measured against a range of key domains so that it fully reflects the range of human experi-

ence. These domains must at least include:

- Emotional well-being
- Interpersonal relations
- Material well-being
- Personal development
- Physical well-being
- Self-determination
- Social inclusion
- Equal rights

c) **Indicators of quality**

There are three complementary indicators of quality which apply to all these domains: *subjective indicators, objective indicators and organisational indicators*. Subjective indicators focus on personal responses and rating of satisfaction. Objective indicators focus on a range of external environmentally based conditions and can be neutrally measured and compared. Organisational indicators are essential to ensure efficiency and sustainability of social services.

d) **Setting of targets and the measurement of change**

A valid model of service quality must not be based on static or minimum standards. Quality is a journey, not a fixed abode. Therefore, such a model must be dynamic and developmental. A valid model of service quality must enable organisations to pinpoint what needs to be improved. Furthermore, it must provide organisations with guidance on how to achieve improvement. The model must be able to demonstrate whether such improvement has been achieved or not.

Epilogue

EASPD wants to promote a EUROPEAN QUALITY PRINCIPLES FRAMEWORK (EQPF) as the basis for service delivery in Europe. The EQPF should be supported by local quality standards which reflect these principles and practices. As

it was said above, quality is not a rigid concept, but rather developmental.

Developing a European Quality Principles Framework requires a fundamental understanding of the concept of Quality of Life and taking into consideration key values such as dignity, equal opportunities, independent living, full participation in and contribution to society. High quality services should be built on these values.

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Main Report

Social services of general interest – the EU facing important course-setting decisions for the future of its policy and legal framework

More than four and a half years have passed since the Green Paper on “services of general interest”¹ was published in May 2003. And the follow-up White Paper of the same name,² which for the first time dedicated a special section on social and health services (social and health SGIs), is already three and a half years old. The period between summer 2004 and autumn 2007 has witnessed three special consultations,³ a Communication on social services of general interest (SSGIs),⁴ the commissioning of two expertises, the first Forum on Social Services (held in September 2007) and a number of conferences, seminars, etc. in several Member States of the EU as well as at European level. Looking back at the 1/2007 newsletter, we see that the first Main Report traces important developments of the last few months, focusing particularly on the first Forum on SSGIs.^{5,6}

The first Forum on Social Services, organised jointly by the European Parliament and the Portuguese EU Presidency, took place in Lisbon on 17 September 2007. The intention behind the event was to once again create an opportunity for organisations of civil society, the social partners, representatives of municipal and regional authorities and other interested parties to present their political expectations and exchange their experiences regarding the application of Community law in the fields of internal market, competition, state aid and public procurement. Nearly all participants agreed that in any conflict between the realisation of a general interest mission and the application of Community law, unconditional priority should be given to the former. In a well received speech, Commissioner Špidla announced that a “Communication on a strategy for social SGIs” expected for November 2007 would once again elucidate Community law and clarify its application (also referring to the cases and examples brought up in the various consultations and studies). He explicitly advocated a “more



flexible” application of Community law, e.g. with regard to the criteria of the state aid package of 29 November 2005. This would, for instance, give Member States sufficient leeway to determine what modalities are to apply to “entrustment”, as long as compliance with basic principles of EU law such as transparency, non-discrimination and proportionality was ensured. The Commissioner claimed that this approach would extensively reduce the necessity for adjustments of secondary law. According to Commissioner Špidla, the Communication will also mark the start of a Community initiative on the “quality of social services”, an objective as important as efforts to improve their effectiveness. The Communication is also expected to propose the establishment and co-funding by the Commission of training measures for local and regional authorities on the application of public procurement regulations.⁷

Although these announcements were welcomed by most, participants found that there were still a number of issues without clear or definitive answers. Some of these open questions are: 1) How will the European Court of Justice view the concept of a “flexible” approach? 2) How should the specificities of SSGs and their users identified in the Communication on SSGs and the subsequent consultation process be embodied and used in the political and legal structuring of framework conditions for SSGs in the field of health and social welfare? 3 a) Can these specificities be used to justify and guarantee exceptions from or adjustments in secondary Community law (state aid; contract award)? b) And if so, which ones? 4 a) How (with whose participation) should the upcoming initiative on the quality of social services be implemented? b) Will the issues primarily dealt with be principles and guidelines or also concrete standards? As a follow-up to the conference, a document was drawn up to present its central issues, demands and conclusions (cf. <http://www.mtss.gov.pt/eu2007pt/en/left.asp?01.02.03.01>). The conference papers are currently being prepared for publication.

On 17 October 2007, the Commission presented a new **Communication on social integration**,⁸ which will now be followed by a four-month consultation process. Improved access to high-quality social services is one of the three

main topics of this Communication. It is still unclear whether and how this process is linked to the creation of the observation and dialogue instrument announced for late 2007 in the 2006 Communication on SSGs and to the quality initiative mentioned above. The **Reform Treaty for the EU** approved by European heads of state and government on 18 October 2007 once again emphasises the role and relevance of services of general interest (SGIs) for the social dimension in Europe and for national welfare state arrangements in general (in Protocol no. 9 in connection with the new Article 14), and therefore also the importance of social and health SGIs.

The ultimate political (e.g. the formal and factual distribution of competence) and legal implications cannot yet be definitively assessed. By the time this article went to press in late October, it was also not yet clear what the **EU’s next steps would be in the area of SSGs** – in terms of instruments, content and procedure. The most probable assumption was that a Communication on SSGs including a section on SSGs would be presented by mid-November as part of the progress report on the internal market. In view of all the announcements made so far, this would clearly be a “small-scale” solution and it would mean classification as (and subordination to?) another policy process, and in any case (for the moment) it would also mean giving up the idea of a Directive or inter-institutional agreement. The Member States and the Commission must therefore continue to work actively on the

political development of framework conditions and provisions for the organisation, regulation, provision, financing and evaluation of social and health SGIs.

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- 1 COM(2003) 270 of 21 May 2003
- 2 COM(2004) 374 of 12 May 2004
- 3 The Social Protection Committee in 2004 and 2006 launched two consultations on social and health services of general interest. Another consultation concerning health services in the internal market was conducted by the General Directorate Health and Consumer Protection in 2006.
- 4 COM(2006) 177 of 26 April 2006
- 5 This article does not yet include the results of the 2006–2007 “Study on the situation of social and health SGIs in the EU” commissioned by the European Commission (and which ISS participated in) nor those of a legal expertise on problems of the application of current Community law also including detailed proposals on the legal foundation of Community regulations and their structure. These studies were not submitted to the Commission until the summer months of 2007, and by late October they had still not been published (publication is expected by the end of the year).
- 6 Consultations of the Social Protection Committee on social and health services in 2004 and 2006 (the 2006 synthesis report on the second round of consultations on SSGs and the answers received can be found at: http://ec.europa.eu/employment_social/social_protection/questionnaire_en.htm. The Observatory’s website – under “Aktuelles” – offers an additional analysis of the answers of the governments of nearly all 27 Member States) and the 2006 consultation of the Directorate-General for Health and Consumer Protection on health services in the internal market.
- 7 The Directorate General for the Internal Market announced in autumn 2007 the publication of a manual that will also include explanations on the application of contract award legislation in the social area.
- 8 COM(2007) 620 of 17 October 2007 on “Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market”.

New cooperation models in the social sector: the example of public-private partnerships

The strain on public budgets and concrete problems in the area of services of general interest are strong impulses behind the current discussion on new forms of cooperation for the fulfilment of social tasks. Among these forms is an approach referred to as “public-private partnerships” (PPP). In cooperation with the German Association for Public and Private Welfare, the Observatory (office of the Coordination Group) hosted a conference on “Public-Private Partnerships in Europe” on 21 September 2007. The conference focused on so-called cooperation models. The term “cooperation model” refers to PPP models that are broader than purely financial and contractual cooperation structures, that are intended for the long-term delivery of services and that also bundle non-financial resources such as expertise. In addition to providing an opportunity for reviewing European trends in this area, the conference served to present and analyse various examples of best practice in the social sector. The main results of the conference are summarised in the following article, which also takes into account current research results and political developments. A complete version of the conference documentation will soon be posted on the websites of both the German Association for Public and Private Welfare and the Observatory.



Torre de Belém, Lisbon

PPP – a definition

How to define PPPs and decide what regulatory framework is needed in this area are issues that are presently being considered both at European and national level.¹ The European Commission distinguishes between “institutional” and “contractual” PPPs. Another approach is taken by Birgit Grüb and Dietrich Budäus, who see PPPs as a socio-economic system and place a great deal of importance on the “trust” factor.² Defining PPPs as long-term cooperation models that are broader than purely contractual and financial cooperation structures can be an advantageous approach for the social sector. This approach is one that can also cover network-like structures. Particularly in the social sector, user orientation is fostered not only by bundling financial resources but also by drawing more and more expertise and other non-financial resources into cooperation structures.

Prerequisites, opportunities and limitations of PPPs in the field of social services

The examples of PPPs presented at the conference³ are all structures that were created and developed at local level in reaction to a specific need for social services. The following aspects were mentioned as being the most important prerequisites for successful PPPs:

• Decentralised organisation and new forms of management and coordination

The decentralised organisation of PPP projects is an essential aspect, as the specific prerequisites applying to the field of services of general interest are such that they can only be taken into consideration at local level. This reflects the special character of services of general interest in Germany. A “bottom-up approach” is always preferable, which means that PPP projects should ideally be implemented at local level. In the opinion of conference participants, a top-down approach can merely initiate processes, create incentives and provide fertile ground for PPPs to develop.

• Win-win situations, trust and common visions

If PPPs are to succeed, so-called “win-win situations” are important, i.e. all parties must benefit from the cooperation. Mutual trust, the courage to be creative and a common vision are other important aspects.

• Long-term organisation and financial sustainability

Sustainability must also be guaranteed from a financial and organisational point of view. PPPs need to be supported throughout their life cycle. This means that adequate financing must be available. Participants stressed that although PPPs could result in improved efficiency, they did not automatically mean lower costs.

It was believed, however, that the overall chances opened up by PPPs outweighed potential limitations. PPPs can therefore serve to reduce the pressure for action that can arise at local level as a result of specific demand for certain services; they are a flexible and innovative approach to expanding the range of services on offer. Participants also saw potential in drawing on civic commitment in the community and in taking advantage of the social interests of employees of (for-profit) companies. Risks were seen in the area of quality. In this regard, participants stressed that PPP models would need well-defined quality standards and effective monitoring of compliance with these standards.

Regulatory requirements: need for national and/or European regulation?

Both the German Federal Government and the European Commission are currently working on various initiatives in the area of PPPs. For instance, a Communication of the Commission on institutional PPPs has been announced for late 2007, and a directive on concessions is planned for 2008. Another important development will be the steps taken by European legislators in the area of “social services of general interest”. However, participants rejected the idea of overly strict regulation. The innovative potential and the flexibility offered by PPPs should not be restricted.

Conclusion

PPP in the social sector can be advantageous as long-term cooperation models under the conditions we have described. They can pave the way for innovations and close gaps in supply at local level. What we need for the social sector is a broad definition that can also include networks and structures based on civic commitment. Of course, PPPs can also be fostered “from the top down”, but such an approach is severely restricted in its applicability because of the individual character of the prerequisites applying to specific local



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conditions. As a result, PPPs cannot easily be managed through European or national regulations. “Softer” forms of coordination at regional level would be more helpful in this respect.

Hanna Steidle, German Association for Public and Private Welfare

1 Cf. European Commission: Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions (2004), and Communication on Public-Private Partnerships and Community Law on Public Procurement and Concessions (2005); cf. Piontkowski, Kerstin/Steidle, Hanna 2007: Öffentlich-private Partnerschaften: Neue Kooperations- und Finanzierungsformen auch für den Bereich der sozialen Arbeit?, in: NDV 10/2007 and 12/2007; cf. also current developments in the area of social services of general interest.

2 Cf. Budäus, Dietrich/Grüb, Birgit (2006): ÖPP als sozioökonomisches System – eine erweiterte Perspektive, Diskussionsbeiträge Public Management Nr. 53, Universität Hamburg.

3. “Chance B – Sozialbetriebs-GmbH” (Austria), a company offering housing and educational services for people with disabilities and operating buildings for this purpose; “Contact Netz für Jugend-, Eltern- und Suchtarbeit” (Switzerland), a joint foundation run by various private and public operators and offering services in the area of drug counselling and addiction prevention; the so-called “Augsburger Nachsorgemodell” (Germany), an aftercare cooperation project run by various private and public operators and offering social and medical aftercare services to young cancer patients and chronically ill children and young people.

Social Services in Europe

Social services in France: a sector at the crossroads

The French social services sector is very diverse: it covers social inclusion, social housing, health services, social protection, vocational training, and a number of other aspects. This report will focus on what is called in France the “social inclusion” sector, which covers social and medico-social services designed to assist the elderly and the disabled as well

as people in situations of social exclusion or delinquent childhood. Furthermore the sector includes early childhood services, initiatives for insertion by economic activity (*insertion par l'activité économique*), emergency housing and socio-legal services, etc.¹ These services are currently on the frontline of the European topic of “social services of general interest” (SSGI): indeed it is nothing less than the recasting of our solidarity mechanisms that lies behind these debates of apparently only legal interest about conciliation between internal market rules and specificities of social services.

The providers: common principles and institutional differences

In France, social inclusion services are provided primarily by solidarity associations, then by mutual societies and private not-for-profit and for-profit organisations.

In France, **solidarity associations (associations de solidarité)** occupy a decisive place in the field of social and medico-social institutions and services. The 120,000 associations of this type, which operate on a not-for-profit basis and mobilise approximately 195,000 voluntary workers and around 430,000 full-time workers, provide services for 1.5 million people. Together, they represent an average of 55% of the whole residential facilities of the social and medico-social sector, ranging from 45% of old-age residential care, 65% of local services to assist elderly or dependent people in their own homes, 76% of institutions and services for people in social difficulty, 88% of facilities for disabled children and 91% of facilities for disabled adults.



Troyes, France (Photo: Wilhelm Bücher)

In addition to these services, solidarity associations carry out projects dealing with the implementation of public policies providing help for people in difficult social and/or family situations facing the risk of social exclusion.

These associations are financed by the state, local authorities and social insurance agencies. They can also be partly financed by members' contributions, by donations and legacies or even in more or less important proportions by users themselves. Some associations have very few or no public subsidies at all.

Secondly, **mutual societies** also carry out actions and/or policies in the field of inclusion. Both the *French mutual insurance system* and *Mutualité Sociale Agricole* thus manage a vast network of institutions and services especially for the elderly or handicapped.

Thirdly, 32,000 other **social and medico-social institutions and services**, of very diverse size, deal with fragile populations, people in severe social difficulty or at risk of losing their "autonomy" in the wider sense of the word (not only disabled people, but also old people, the homeless, endangered children, refugees, asylum seekers, etc.). They employ 500,000 workers, provide services for 1.05 million people, and are mainly managed by non-profit organisations. However, profit-oriented organisations intervene on a small part of the field, mainly in the sector of the services for non-dependent old people.

Legal framework

The whole sector is governed by the legislative provisions of the social action and family code, renewed by law no. 2002-2 of 2nd January 2002, which guarantees quality of service and respect of

the rights of the users. These provisions specify that:

- These services fall under missions of general interest and social utility specified by the law;
- All beneficiaries are guaranteed that they can exercise their rights and maintain their personal freedom;
- The offer is subject to territorial planning schemes;
- The creation, transformation or extension of institutions and services are subject to preliminary authorisation;
- There is a legally stipulated qualitative evaluation of the activity;
- There are supervisory or sanction powers (mainly in the hands of local authorities);
- Public Financing is provided within a system of fees and charges set by the law.

This legislative framework explains the mechanism through which mainly all the above mentioned actors can be defined as not-for-profit private stakeholders of general interest. It fulfils several aims: quality of service, balanced offer over the whole territory, costs control and others. It does not take into account the statute of the operator and no category of provider is prevented from positioning himself in this market.

Current challenges and trends

This very specific situation between the fields of general interest and economic activity, between commercial approach and public service, explains why our sector is located in a grey area regarding the application of EU rules: the *social* aspect does not imply that this sector does not have to respect *internal market* rules. Several topics are currently causing major headaches amongst jurists from

the French social inclusion sector: public procurement rules, freedom to provide services and freedom of establishment rules, taxation rules, economic/non economic distinction etc. It is clear that these topics will require a deeper analysis for all the legal issues that have to be dealt with to become clear. However, French social actors have now understood that what lies behind these topics is not only a legal challenge, but also a possible redefinition of the meaning of "solidarity".

Two main risks were identified: The first risk involves **deregulation of the national regulation system** resulting from an increasing influence of the internal market rules (e.g. freedom of establishment and provision of services). Indeed, the social inclusion sector is strongly affected by a legal framework that imposes a whole series of obligations on the operator. These requirements, which aim to ensure quality of service and especially to protect users considered as vulnerable could be struck by the objective of realisation of an internal market of services.

The second risk deals with the **equal treatment of all providers** as for-profit offers rise and contractual relations between the operator and the public bodies are modified: the call to tender practice (which arises from the EU directives relating to the public procurement) puts all service providers on an equal footing regardless of the specificity of the non-profit offer and of the risk that the social actor might be reduced to the function of an "economic service provider".

Common issues, common recommendations

This legal uncertainty has led the French social inclusion actors to express recommendations not only to EU institutions, but also to the French authorities. Beyond differences and specificities, a large part of these recommendations can be roughly summed up in a few key messages.

First, to **recognise the missions of general interest** and the protection of vulnerable users assured by social and medico-social services, and to give precedence to these interests over competition, free provision of services and free establishment rules.

Second, to **promote an EU legal framework specifically devoted to economic Social Services of**

General Interest (SSGIs) through a sector-based Directive.

Last but not least, to **promote specific financing and contracting procedures at EU level** between public authorities and social operators (delegation of public service, development of objectives linked to funding agreements recognising the initiative ability of the above-mentioned social operators). A special legal status, a special tax scheme, and even a certain amount of competition could be applied to social service providers with the aim of enabling them to exert their missions of general interest.

SSGIs are undoubtedly provided to defend fundamental social rights, and consequently need a special regulatory framework (taxation, competition, etc.). But beyond the French case, recognition of SSGIs at EU level, which would ensure the sustainability of the values defended by our social protection model, can only become possible through contacts, common reflections on SSGI and exchanges of experience involving social actors from several EU member states. Only these contacts can help the Union to transcend the apparent heterogeneity of social services in Europe and propose an adapted regulation tool.

Jérémie Cazeuneuve, European Public Affairs Manager, Caisse Centrale de la Mutualité Sociale Agricole (CCMSA). CCMSA is member of Collectif SSIG-FR (<http://www.ssig-fr.org/>), a group composed of 15 French non-profit-making actors in the area of social and health services of general interest, whose common findings furnished the elements of this report.

1 For a concrete illustration of these activities, and for a broader description of the whole French social sector, please refer to a report presented by the French Collectif SSIG-FR (<http://www.ssig-fr.org/>) during a conference on SSGIs that was held on 30 May 2006 in Paris.

News from the
Observatory

Services of general interest – European framework and scope for national action

In the year 2000, the Lisbon European Council agreed that liberalisation in the services sector was an issue that would require special attention. It is in the very nature of the issue that this pro-

cess should also affect the area of “services of general economic interest”, which are part of the European competitive system. Article 16 of the EC Treaty gives these services a special position, and this is what makes them particularly interesting within the context of liberalisation efforts. Services of general interest are also handled separately at national level. For instance, suppliers of non-profit services benefit from certain tax advantages.

As a result of this separation of levels, there are two perspectives – a European and a national one – that can be applied to the organisation of non-profit services. This leads to a variety of approaches and contexts in which the debate on the common good is being played out and that should be kept clearly distinct in the course of this debate.

At the same time, both levels are linked to each other through Articles 16 and 86 (2) of the EC Treaty. On the one hand, Article 16 transfers the tension existing at EU level between the special position given to “services of general economic interest” and the open and competitive European internal market to non-profit services in Germany; but on the other hand, because European law has priority of application, the privilege of non-profit status at national level collides with European competition laws. The definitions of “general economic interest” and non-profit status could therefore also prove to intersect.

If we look at the relevant ECJ judgments on “services of general economic interest”, we see that in most cases the issue is one of infringement of the ban on discrimination as a result of national regulation (Stauffer, Cassa di Risparmio di Firenze etc.). What privileged status these services might enjoy in the individual Member States is fully irrelevant; the only relevant condition is that they must be accessible to all (potential) market participants. The ECJ does not define the common good.

In its White Paper, the European Commission defines the “general interest” as being based on a set of common elements including universal access, affordability, continuity, quality of service and the concept of user and consumer protection. With regard to the characteristics of social services, the Commission, in its Communication of

April 2006, mentions the solidarity principle, the personalised and flexible nature of the services, the absence of a commercial purpose, the participation of volunteers, the element of local provision and strong embodiment in local tradition, and the asymmetry of the relationship between providers and beneficiaries. Having examined the European perspective, we will now look at the situation in Germany.

German regulations with regard to recognition of non-profit status also involve an attempt to define the common good, and it might be useful to take these criteria into consideration in the current debate: promotion of the general interest and caritative work as purpose of the non-profit activity, tax privileges for activities operated on a commercial basis but closely connected with objectives recognised as being for the common good (in German: Zweckbetrieb), such as old-age and nursing homes, convalescent homes, meal services, kindergartens, children’s homes and student residences, youth hostels, facilities for the physically disabled and welfare education, including sheltered workshops or therapy institutions for people with disabilities and integration projects. As far as attempting to find a national definition of the common good is concerned, therefore, the criteria used by the tax authorities in procedures for the recognition of non-profit status should be taken into account. It must be remembered, however, that the privilege of non-profit status does not apply to society as a whole but only individual tax payers (tax substitute), and that it is possible only in cases where the state is responsible for services of general interest (relief of the state).

In conclusion, we can say that the debate on the common good should make a clear distinction between European and national perspectives. This facilitates the discussion. At national level, the definition begins in the scope of action guaranteed under European law. This scope of action is restricted by the general ban on discrimination and by the European basic freedoms. The national definition can be tested on the basis of these restrictions. A European definition of “general interest” is, on the other hand, nowhere in sight. We should therefore actively take advantage of the opportunity to start from the Member State perspective in order to work out a definition of

the common good and exert an influence upon the European debate on the issue.

An extensive document on this topic (in German only) can be found on the Observatory’s website.

Cornelia Markowski, German Association for Public and Private Welfare

New publications

The Commission’s Communication on Health Services, published on 26 September 2006, initiated a **consultation process** on this issue. More than 270 responses have been received within the scope of this consultation process. The Observatory has supplemented the Commission’s summary with its own **summary and short evaluation of the responses of the governments of the 27 Member States**, which can be downloaded from http://www.soziale-dienste-in-europa.de/Anlage/Konsultationsprozess_GDL_Auswertung_MS.pdf (in German only).

European family policy

With family policy being discussed more and more in a European context, for instance within the scope of the “European Alliance for Families”, the Observatory has now turned its attention to the wide range of **developments in family policy in Europe**. The profound social, cultural and economic changes currently being felt in all of Europe have given rise to common problems in family policy and to changing demand for **family support services**. The Observatory has summarised the main current political developments at European level and in the Member States (with special focus on the new Member States): http://www.soziale-dienste-in-europa.de/Anlage/Bericht_Familienpolitik_FuD.pdf (in German only)

On 15/16 November 2007, the Observatory, in cooperation with the German Association for Public and Private Welfare, hosted an international conference in Berlin on the issue of **“Current developments in European family policy – service concepts and policy approaches in the new and old Member States”**.

The conference papers will soon be available on the Observatory’s website.

D a t e s

2008

26 February–1 March/Lisbon, Portugal

European Social Science History Conference
ESSHC Conference Secretariat,
International Institute of Social History
Information: <http://www.iisg.nl/esshc/2008.php>
E-Mail: esshc@iisg.nl

5–7 June/Aarhus, Denmark

European Sociological Association Research Network ‘Sociology of Professions’, Interim Meeting, Transforming boundaries – a ‘new’ professionalism in the making?
Information:
www.europeansociology.org/

30 June–4 July/Tours, France

33rd Global Conference of ICSW: The dynamics of social welfare in globalization – Lessons from the past, challenges for today and tomorrow
Information:
<http://www.icsw2008.org/>

2–4 July/Paris, France

16th European Social Services Conference
European Social Network
Information: http://www.socialeurope.com/deutsch/d_about.htm

9–12 July/Barcelona, Spain

International Society for Third Sector Research (ISTR): 8th International Conference and 2nd EMES-ISTR European Conference in partnership with CINEFOGO: The third sector and sustainable social change: new frontiers for research
Information: www.istr.org

16–19 August/Salvador de Bahia, Brazil

IFSW World Conference – International Federation of Social Workers, Conselho Federal de Serviço Social (CFESS): The challenge of turning rights into reality in an unequal and globalized society
Information: www.cfess.org.br
E-Mail: cfess@persocom.com.br

2–4 September/Lancaster, Great Britain

International Disability Studies Conference
Lancaster University, Department of Applied Social Science
Information: <http://www.lancs.ac.uk/fass/faculty/event/1838/>
E-Mail: h.morgan@lancaster.ac.uk

7–9 October/Cologne, Germany

International Conference on Cooperative Studies: Contribution of co-operative self-help to economic and social development
University of Cologne
Information: www.igt2008.de
E-Mail: info@igt2008.de

Our staff

There have been staff changes in the Observatory. Alexandra Schmider has left the Observatory. Mathias Maucher is now working for Solidar in Brussels.

Since 15 November 2007, **Birgit Sittermann** has joined us as a scientific officer. She studied political science, economic policy and recent history at Münster, Germany and Exeter, Great Britain. Her work focuses on the effects of European policy on national third sectors and on non-profit organisations. After working for the research project 'TSEP – The Third Sector and European Public Policy' she was a member of the young researcher group 'European Civil Society and Multi-level Governance' at the University of Münster. Birgit Sittermann can be contacted at: birgit.sittermann@iss-ffm.de.



In October, **Daniela Scheetz** replaced Thomas Schmid as student assistant at the office of the Observatory in Berlin.



Ms. Scheetz is in the seventh semester of a diploma course in political science at the University of Potsdam. She is working in the area of international relations and European integration. Within the scope of her studies, she has spent a semester abroad at the University of Tampere, Finland.

News Update

Commissioning tasks in the social area

In response to the question of FDP (Liberal Democrats) Members of the German Parliament regarding public procurement law for local authorities in the child/youth welfare and social welfare area, the German Federal Government emphasized on 14 May 2007 that calls for tender in the scope of normal contract award procedures were not possible in these two areas. The Federal Government has thus reacted to the growing tendency to award more and more contracts for social benefits through invitations to tender.

According to the argument presented by the Federal Government, the basic structure of both child/youth welfare and social welfare involves the requirement that plurality of offer and exercise of beneficiaries' right of choice must be guaranteed. Moreover, such services are provided within the scope of the triangular relationship between a funding agency, a provider and a user of a given social service based on a system of service concessions for the providers as stipulated in German social legislation and referred to with the technical term "sozialrechtliches Dreiecksverhältnis". However, invitations to tender within the scope of normal public procurement procedures do not apply to contractual relationships between the beneficiary and the service provider, but only to bilateral relationships between the financing institution and the provider. Furthermore, the necessary transparency of the services being offered is achieved by the obligation to determine the main features of the service and to agree adequate fees in the service agreements.

Finally, the Federal Government claims that the fact of being invited to tender in a normal contract award procedure does not alone suffice to create more competition in the area of child/youth welfare and social assistance.

Anna Englaender, ISS e.V.

The European Alliance for Families

In order to meet the challenges of demographic change and to foster family-friendliness in economic and social development, the heads of state and government of the European Union created the European Alliance for Families at the European summit of 8 and 9 March 2007.

The Alliance hopes to create impulses for more family-friendly policies through exchanges of ideas and experience in the various Member States and to foster cooperation and fruitful learning from each other in the European Union.

The European Alliance for Families makes a substantial contribution towards implementing the Lisbon strategy for economic growth, employment and sustainable population development as well as towards stronger social cohesion and the implementation of the road map for gender equal-

ity. Information about the family policy measures of the various EU Member States can be found at the Alliance's web portal at http://ec.europa.eu/employment_social/families/index_de.html.

New publications

As a result of the concurrence of effects of economic and cultural globalisation with demographic change and shifting employment conditions, the social systems of the European Union are currently facing a broad range of challenges. The authors of an anthology presented by Christoph Linzbach et al., "Globalisierung und Europäisches Sozialmodell" (Baden-Baden: NOMOS, 2007), explore the issue from a European and international perspective and offer answers to the question of how the European Union should position itself vis-à-vis today's great social issues. With this new work, the editors are continuing along the lines of their 2005 book on "Die Zukunft der sozialen Dienste vor der Europäischen Herausforderung", the future of social services facing the European challenge. Both volumes are available from the distribution department of the Diakonisches Werk in Germany: vertrieb@diakonie.de

Imprint

Publisher:

Institute for Social Work and Social Education
Observatory for the Development of Social Services in Europe
Hans-Georg Weigel (Director)
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D-60439 Frankfurt a.M.

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This is a publication of the Observatory for the Development of Social Services in Europe.
Homepage: www.soziale-dienste-in-europa.de

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The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 11018 Berlin, provides funding for the project "Observatory for the Development of Social Services in Europe".

Design: www.a-vitamin.de

Print: Werbeproduktion Bucher, Berlin

Translation: Nicole Gentz, Berlin

Circulation:
German: 1,400
English: 600
ISSN 1616-7597

Date of publication:
December 2007

The Newsletter of the Observatory is published twice a year.

Ordering address:
see publisher and editor

This newsletter is published within the scope of the public relations activities of the government of the Federal Republic of Germany. It is provided free of charge and is not destined for sale. This publication does not necessarily reflect the opinion of the government of the Federal Republic of Germany. Responsibility shall remain with the publisher and/or the respective author.



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Development of Social Services
in Europe