



News Letter

1/2005

Observatory for the Development of Social Services in Europe

Towards a European Directive on Services in the Internal Market: Assessing the legal repercussions of the proposal and its Impact on Health Care and Social Welfare Services

Presented by the European Commission in January 2004, the proposal for a Directive on services in the internal market sets out a general legal framework to reduce barriers to the cross-border provision of services within the European Union. The establishment of a genuine internal market in services is considered to be a key step in the process launched by the Lisbon European Council to make the EU the most compe-



titive and dynamic knowledge-based economy in the world by 2010. Considering the broad scope of the proposal, its content has direct repercussions on the provision of health care and social welfare services.

The core of the Commission's proposal relates to the two services-related fundamental freedoms enshrined in the EC Treaty. On the one hand, it introduces measures to eliminate restrictions to the freedom of establishment, such as administrative simplification of procedures and the establishment of single points of contact. In addition, Member States will have to prove that their national authorisation schemes are compatible with the conditions of non-discrimination, necessity and proportionality. If not, these requirements will have to be modified or abolished. On the other hand, the proposal intends to stimulate the free movement of services on a temporary basis by applying the country of origin principle. This means that a service provider established in one Member State who wishes to provide services on a temporary basis in another Member State, is only subject to the law of the country in which he/she is established. This rule applies for any requirement relating to the access to, the exercise of, as well as the supervision of service activities.

Scope

The proposal covers all economic activities involving services except services provided by the state for no remuneration in fulfillment of its social, cultural, educational and legal obligations. Only some services provided for remuneration, namely in the field of finance, telecommunica-

tions and transport, are expressly excluded from the proposal. By making purely commercial services as well as health care and social services, such as social housing and household support services, subject to the same provisions, the proposal does not seem to take into account the substantial differences between service activities: Contrary to purely commercial services, services in the field of health care and social welfare are characterised by the presence of a three party model (patient/social beneficiary, service provider and payer of services), by the information asymmetry between patient/consumer and service provider and by the fact that they are (partly or mainly) financed out of public funding and confined by social and public health considerations.

Relationship with Community law

Because of its horizontal approach, it could be questioned whether this proposal respects the fundamental EC principle of subsidiarity. Its provisions are likely to interfere with policy areas such as public health and social security, for which Community action is only complementary to national regulatory powers and for which the EC Treaty provides a specific legal basis for Community initiatives.

In addition, the far-reaching nature of the proposal raises the question as to whether the proposal respects the fundamental principle of proportionality. As regards the temporary provision of services, the country of origin principle will apply, even in the absence of any harmonisation of the different national provisions. However, the existence of mini-

Editorial

DEAR READER,

1 MAY 2005 WAS THE FIRST ANNIVERSARY OF THE EASTERN ENLARGEMENT OF THE EUROPEAN UNION. IN HIS SPEECH TO COMMEMORATE THE OCCASION, THE PRESIDENT OF THE EUROPEAN COMMISSION, JOSÉ MANUEL BARROSO, STRESSED THE POSITIVE EFFECTS OF ENLARGEMENT ON THE CONSOLIDATION OF DEMOCRACY, HUMAN RIGHTS AND POLITICAL AND ECONOMIC STABILITY.

ECONOMIC CHANGE AND ITS EFFECT ON SOCIAL SERVICES ARE ALSO THE FOCUS OF THIS NEWSLETTER'S LEADING ARTICLE AND MAIN REPORTS. IN THE LEADING ARTICLE, WOUTER GEKIERE EXAMINES THE POSSIBLE EFFECTS OF THE SERVICES DIRECTIVE ON SOCIAL AND HEALTH SERVICES. THE CURRENT SITUATION WITH REGARD TO THE COMMUNICATION ON SERVICES OF GENERAL INTEREST IN THE SOCIAL AND HEALTH AREAS IS DESCRIBED IN THE FIRST MAIN REPORT.

IN THE SECOND ARTICLE OF THE SAME SECTION, DR. WINO VAN VEEN COMPARES NATIONAL REGULATIONS ON NOT-FOR-PROFIT OPERATION; THESE REGULATIONS HAVE GRADUALLY SHIFTED TO THE CENTRE OF INTEREST IN THE DISCUSSION ON THE ROLE AND POSITION OF SOCIAL SERVICES AND THEIR PROVIDERS WITHIN THE EU. DR. VAN VEEN'S ARTICLE IS BASED ON A PUBLICATION OF WHICH WE WERE GRACIOUSLY PROVIDED AN ENGLISH TRANSLATION BY THE BERTELSMANN FOUNDATION – OUR THANKS FOR THIS FRIENDLY ASSISTANCE.

INTERESTS OF A MORE NATIONAL SCOPE ARE TAKEN INTO ACCOUNT IN THE GUEST COLUMN AND IN THE COUNTRY REPORT, WHICH EXAMINE THE SIGNIFICANCE OF SOCIAL SERVICES FOR SOCIAL COHESION IN THE CZECH REPUBLIC AND THE SITUATION AND STRUCTURE OF SOCIAL SERVICES IN PORTUGAL.

WE WISH YOU PLEASANT READING!

THE EDITORIAL TEAM

mum harmonisation is essential to create a sufficient level of mutual confidence between Member States. As to the case-by-case exceptions to the country of origin principle, the proposal substantially limits the 'rule of reason' grounds recognised by the European Court of Justice on the basis of which a Member State can take measures relating to a provider established in another Member State. As regards the freedom of establishment, Member States will have to submit all their own national authorisation schemes to a major evaluation operation before any allegation of an infringement of Community law. It substantially differs from the traditional European infringement procedure, according to which the European Commission brings action against Member States when it has reasons to believe that they are in breach of Community law.

The proposal also partly interferes with matters covered by other secondary Community instruments, such as Directive 96/71/EC on the posting of workers and EEC Regulation 1408/71 on the application of social security schemes. At the same time, it anticipates the outcome of certain pending Community initiatives, such as the Commission's Communication on Social and Health Services of General Interest (and maybe eventually a framework Directive on Services of General Interest), the high level reflection process on patient mobility and health care developments in the European Union and Community rules on conflict of laws as regards contractual (Rome I Convention) and non-contractual obligations (Rome II Draft Regulation).

Potential impact for health care and social welfare services

Given the absence of an impact assessment study of the proposed internal market rules on specific sensitive services, such as health care and social welfare, it remains uncertain what the exact implications of these rules on these services are. As regards the freedom of establishment, the national schemes governing access to and exercise of health care and social welfare services will have to be assessed in the light of the conditions of non-discrimination, necessity and proportionality. This assessment operation will particularly apply to

national requirements, such as quantitative and territorial restrictions, price fixing mechanisms and staff norms. Each of these requirements plays an important role in national/regional planning policy of Member States to safeguard the accessibility, the affordability and the quality of services.

It is clear that not all national regulatory measures on health care and social welfare will have to be lifted. However, the peer review process to which they will be submitted is likely to create legal uncertainty for policy-makers and service providers. This is particularly true in the light of the diversity between the national regulatory schemes in the field of health care and social welfare. As to welfare services for instance, most of the national schemes governing welfare services know the distinction between the public and the private sector; however in some Member States, such as Belgium, the welfare care system can also be organised by non-profit organisations that receive state subsidies. Regarding these subsidised initiatives, it is feared that the peer review process could endanger national subsidy requirements and lead to opening the delivery of welfare care services to free competition between private actors.

It is true that the proposal contains general derogations to the country of origin principle, but, here again, it remains unclear how they would apply in the field of health care and social welfare. Furthermore, the proposal allows for case-by-case derogations, but they can apply in exceptional circumstances and after a lengthy notification procedure.

One way to deal with the problematic application of these provisions, is to introduce specific safeguards and derogations which relate to the management of health and social services. For reasons of legal certainty and consistency, it could also be suggested to simply exclude health care and social welfare services from this proposal. This would ensure consistency with the discussion about the role of the EU in defining these services and the way they are organised and financed, which is the object of a separate reflection process. In its White Paper on services general interest, the Commission has in-

deed scheduled a specific approach to identify and recognise the typical features of social and health services of general interest.

And what about the regional powers?

In its report on the state of the internal market on services, the Commission came to the conclusion that regions play an important role in maintaining barriers to cross-border traffic in services. The proposal launched by the Commission seems to simply ignore the regional policy level, by stating for instance that an authorisation for a new establishment should give the service provider access to the service activity "throughout the national territory". However, in many Member States, such as Germany, Spain, Austria, Italy, the United Kingdom and Belgium, regional authorities have constitutional rights to enact measures regulating access to and exercise of specific service activities in their regions.

Conclusion

In accordance with the co-decision procedure, it is now up to the Parliament to give its opinion on the proposal in first reading. Parliament is expected to pass amendments in plenary session at the earliest by Autumn 2005. In his statement to the European Parliament of 8 March 2005, European Commissioner for Internal Market and Services, Charles Mc Creevy, confirmed that the Commission would not withdraw its proposal and committed his loyalty to the co-decision procedure.

Wouter Gekiere (wgekier@yaho.com), Legal adviser, European Parliament, Brussels

The research report commissioned by Anne Van Lancker, Rapporteur Committee Employment and Social Affairs, European Parliament, is available online at: <http://www.law.kuleuven.ac.be/int/europees/English/Publications/publications.htm>

Social Services as an Instrument of Social Inclusion – A Conference Report from the Czech Republic

When I held my first lecture in Ireland I used the term «subsidiarity». Being asked for the meaning of it, I mentioned: It is what is considered to be a general legal principle in Germany, however, what is applied there only to a selected number of providers and it is what nobody in Ireland ever heard about but what is applied there in all areas of life.

Speaking in Hradec Králové (Czech Republic) this February on a conference that had been organised by SKOK I mentioned something similar in a final remark: civil society and partnership are frequently mentioned in the «old EU» as concepts that deserve celebration; however, it seems to work much better here in the «new countries».

The organisers invited under the title Social Services as an Instrument for Social Inclusion to this 5th Thematic Conference of Providers of Social and Health Services in the Czech Republic.

Gathering of Civil Society

Taking all hesitation of such a comparison into account, it can be said that SKOK is similar to the Federal Association of Non-Statutory Welfare Organisations (*Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege*) in Germany. It is an umbrella for civil society organisations in the social sector (see Newsletter 1/2004). An important difference, though, is that the variety of organisations is much larger. On the one hand, the organisations are very different in terms of size and structure. Large and small organisations are found together on the same level. In addition it can be stated, that all organisations understand themselves largely as social movements. It can be seen as a result of these two facts that 200 people took part in the conference rather than the originally expected 60 participants.

During the preparation as well as seen from the expectations of the participants there had been a close link between two aspects. The discussion about quality of services as means of combating exclusion had been on top of the agenda. On the one hand one wanted to learn about European perspectives: What is the EU-strategy against exclusion? What does the service directive («Bolkestein») mean? Are there already scientific criteria to assess quality? On the other hand, learning meant at the very same time to enter an open debate, looking for strategies for practice. The starting point of the discussion had been the variety of the organisations present and their specific experiences.

Partnership as Challenging the Partners

Here we see the second aspect arising: partnership. Present had been – as speakers and participants alike – representatives of small and large organisations, organisations predominantly providing services or predominantly working as advocates. Present had been as well people who can be seen in one or the other way as representatives of the government. This represents not much more than the commonly known pattern. But already at an early stage it had been getting clear that a partnership cannot be reduced to representatives from different sectors sitting together.

It was clear right from the beginning that the aim of the conference had been to have a declaration, accepted by all participants – considering the variety of representatives definitely not an easy task. It is already remarkable that such a diverse public was brought together, jointly working for such an ambitious project. Looking back at the experiences from comparable seminars and conferences, this can by no means be taken for granted. Especially where cooperation has already been established for a long time, it is often no more than shallow. Partnership meetings are held, aiming at very general proclamations – being so broad that they are basically meaningless. However, the idea in Hradec Králové had been geared to finding out where common positions actually do exist and to elaborate clear challenges for the future.

Quality – Challenges for Politics and Policies

The topics of the conference can be summarised under the following five points:

1) Political and Legal Framework

The Czech Republic is included in the EU-strategy to combat poverty and exclusion. First and foremost it is important to develop an understanding of the problem, appropriately reflecting the changing conditions. On the one hand, the importance of experiences from the last 20 years or so is getting obvious – it is the time during which the EU actively got involved in this area. However, it is getting clear as well that the recent changes require a special political dedication in the «new member states». It is problematic only to join the striving for economic growth – an approach that is questionable anyway. Especially in the area of social services there is a lack of comprehensive legislation matching the framework of social protection. Furthermore – and linked to the aspect just mentioned – the still fragmentary connection between national and local policies has to be developed. However, the main point is to actually recognise and admit that poverty is a serious problem that cannot be excluded from the debate without consequence.

2) Voluntary Character of Work

It is of decisive importance that a major part of the work is undertaken on a voluntary basis. Not least has the relationship between the different actors as well as the relationship between voluntary work and professionalism to be developed further.

3) Local Responsibility

As already mentioned, the distribution of responsibility between the local and national level has to be clearly defined. It is necessary to complement national action plans by action plans at local level. Background for emphasising such an orientation is not least the tension between the necessity of central legislation on the one hand and the needed openness for the concrete local conditions on the other.

4) Who are the Providers

The meaning of these local conditions is not least a question of the providers. Best practices can only be developed locally. Such



© Mgr. Jarmila Neumannová

Dr. Peter Herrmann (on the right), one of the three external experts, on the platform of the conference “Social Services as an Instrument for Social Inclusion” in Hradec Králové.

an orientation allows reflecting concretely the conditions on the spot. Thus we see as well a specifically meaningful way of working: social economy is here a means of avoiding the competition between the different providers. By looking for an intermediate way, it shows that the differentiation between economic and non-economic services is an artificial one.

5) The Ethos

The citizen is more important than the organisation – seemingly a trivality, but many of the contributions made clear that this is a vivid claim.

Even if terms as client, user or customer had been used, it was getting clear that the participants talked about citizens: individuals who have the same rights as those who provide the services. This meant at the same time that the provision of services is very much seen as an added value delivered by civil society. Person-orientation, democratic activity and serving society are fundamentally an entity.

Conclusions

Many things that seem to be new in the Czech Republic should be considered new as well in the «old member states». It has to be seen that in many cases we only find a hiding behind old-fashioned patterns, thus undermining the confrontation with new challenges. Seemingly the challenge posed by poverty is accepted, the protection systems are thought to be principally sufficient and the cooperation between provi-

ders is taken as stable. However, readiness to learn in these areas should be shown on both sides.

Dr. Peter Herrmann
European Social, Organisational and Science Consultancy, - ESOSC, / University of Cork, Department of Applied Social Studies; E-mail: herrmann@esosc.org

Main report

Towards a Communication from the European Commission on Social and Health Services of General Interest

The EU will soon be taking a further step towards the establishment of a special framework for the social and health areas, which includes person-related social services. In early May, the Directorate-General for Employment, Social Affairs and Equal Opportunities announced in Brussels that the Communication on social and health services of general interest could now be expected for autumn of this year. The Communication would be completed, it was announced, in conjunction with work on the Directive on services in the internal market, and it would be coupled with it in terms of content. After the submission of reports (in April and May) and the discussion of amendment proposals in the relevant special committees of the European Parliament and, after the summer break, in the plenary assembly, the revision of the Directive will also be at the top of the agenda for both the Commission and the European Council. This means that among the main projects in the areas of competition, state aid and internal market – which have a significant amount of overlap in terms of the issues and concepts involved and the delimitation between them – the so-called “Monti package” on the permissibility and treatment of state compensation payments for public service obligations imposed on providers of services of general interest should be the first to be ready for adoption (probably in July). These topics also include the Green Paper on public-private partnerships, for which a consultation process was carried out in 2004 so that the Commission can adopt a Communication before the end of 2005.

The Communication on social and health services of general interest, which was announced in the White Paper on services of general interest published on 12 May 2004, has since been prepared in two main directions. One avenue of preparation was the conference on “Social Ser-

vices of General Interest in the European Union – Assessing their Specificities, Potential and Needs” held in June 2004 and hosted jointly by the Observatory, the Platform of European Social NGOs (*Social Platform*) and the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth with the support of the EU Commission (cf. Newsletter 2/2004). For the EU Commission, the main purpose of this conference was to involve both national and European social and health NGOs in the process. Another avenue has been the collection of information and opinions of the governments of the 25 Member States on the basis of a 15-point questionnaire coordinated by the Social Protection Committee, which was to be responded to by mid-December 2004.

For an initial evaluation of the answers, the Directorate-General for Employment, Social Affairs and Equal Opportunities organised a working seminar in Brussels on 1 April 2005. This event brought representatives of the various governments together with representatives of the social partners organised at European level and NGOs operating across Europe. The results of this evaluation indicated that from the point of view of the EU Commission, there are several areas of agreement among the various countries in terms of basic objectives, functions and design principles – despite great differences in the organisation, regulation, financing, provision and evaluation (and especially in the details of individual measures) of their national social and health systems. Some of the shared principles forming the basic foundation of a European social model are solidarity, equality of opportunities, and universal access to financial, material and service benefits. Other activities, including those for the “modernisation of social protection systems”, should therefore pick up the thread of elements shared with social and health services and build on their basic underlying values, which are shared across the EU. Once again, the intention of recognising and taking into account at EU level the specificities of non-profit social and health services and the special characteristics of their users in contrast to other types of services of public interest (particularly with regard to network indus-

tries such as electricity, water, gas, telecommunications, public transport) was stressed – and both of these aspects are clearly reflected in the answers of the governments. However, the question of what instrument and concepts should be used and what scope this activity should have remains open. The role of the EU – in addition to possible law-making in the form of either a framework directive for all services of general interest or sector-based regulations and/or communications – was seen in the promotion of a structured and comprehensive exchange of experience and information, particularly within the framework of an advanced Open Method of Coordination. Two frequently mentioned catchwords that will probably determine the direction and reference points of further discussion and activities at European level were focus on the potential of social and health services for further employment growth and the role of these services as instruments for overcoming the challenges of demographic change.

In addition to the Commission's analysis, the Monitoring Unit has carried out its own evaluation of the answers of the 25 Member States. This evaluation has been summarised into a “*feedback document*” available from our project website under the menu point “Aktuelles”.

Mathias Maucher

Major Aspects of the Public Benefit Status in Europe

Many of the threads followed in current discussions on social and health services of general interest and the directive on services in the internal market lead back to a common question: how to define the public benefit status. An answer to it would help on the specification and acknowledgement of the role of social service providers in an expanding internal market and with regard to the EU legal framework for third sector organisations.

To get a better idea of the present situation, the requirements for the granting and meaning of the public benefit status in four European countries shall be de-

scribed. In doing so, the Netherlands stand for the continental system, England serves as an example for a country with a common-law system whereas Hungary and Bulgaria represent countries with a relatively young legislation in the field of public benefit.

To qualify for the public benefit status, organisations have to meet certain criteria. Some of those criteria are generally recognised, others are country-specific. For private law organizations in general, their objectives and activities may not conflict with the law, public order and morality. In regard to the public benefit status, as a rule, an organization will not qualify if the circle of potential beneficiaries is too limited. In the Netherlands, no real formalities exist that have to be complied with in order to qualify for the designation of a public benefit institution. Rather, there is a non-limitative enumeration, which distinguishes between church, philosophical, charitable, cultural and scientific institutions on the one hand, and institutions having a public benefit object on the other hand. To acquire and maintain public benefit status, moreover, both the object as well as the activities of the institution have to be of public benefit. The English model, on the other hand, focuses on the allocation of funds and the objectives. The objectives recognised for “charities” – the equivalent of public benefit organisations under English law – include inter alia the relief of poverty as well as the advancement of education and religion. Formally, purposes beneficial to the community are accepted, too, but in order to qualify as a charity, the objective has to be charitable as well. Formally, this leads to a closed system of qualifying objectives. A uniqueness of English law is the so-called public policy veto that may be an obstacle for attaining the charitable status. It contains restrictions on political activities, that are not known for example in Dutch law. In countries such as Hungary and Bulgaria, finally, a closed system is to be found. Only if the charter or a similar constituent document describes certain objectives set out by law as activities engaged in or planned, does the organization qualify as generally beneficial.

When it comes to the meaning of the public benefit status, again the concepts differ widely. In the

Netherlands there is no legal form that can be applied exclusively for public benefit, and the public benefit status has no influence on the legal capacity of a chosen legal form. Furthermore, it is strictly speaking not necessary to make use of the facilities offered. Only if an organisation falling into the domain sketched above chooses to do so, will it derive the public benefit status directly from the law. In contrast to this, being a "charity" in England is no matter of options. There, the public benefit status is acquired if the applicable criteria are met, whether or not this is considered desirable by the founders or members. Accordingly, the registration with the Charity Commissioners is no more than a declaratory act. The Charity Commissioners themselves have considerable powers with regard to charities. They act as regulators, advisors, supervisors and enforcers, their powers extending de facto not only to the property at issue, but also via this property to those entrusted with the "power of administration" thereof. If the activities engaged in by the organization do not or insufficiently correspond with the relevant objective, the Commissioners have the necessary instruments to take corrective measures and eventually to "save" the capital for public benefit. As there is no developed law of associations and foundations in England comparable to that on the continent, the most common legal forms for private enterprises with a public benefit purpose are the charitable company and the charitable trust, which enjoys the feature of indefinite lifetime. Just like in England, in Bulgaria the recognition as a public benefit institution is irreversible. There and in Hungary recognition has to be gained in advance.

With regard to the characteristics of the applicable legal regime sketched above, the differences in the degree and manner of state involvement with the founding and functioning of civic initiatives of a public benefit nature are most striking. In particular in England public benefit law has a strong 'public law' nature, as a result of which the influence of the State is far-reaching. Dutch law on the other hand characterises as primarily civil law, with a lot of freedom on the side of the citizenry. Being a public benefit organisation with the state involvement related to that is to a

very high extent a voluntary issue. In addition, opting for public benefit status, has less implication and is reversible as well. Interestingly, the Hungarian and Bulgarian regimes are somewhere in between those two extremes, the Hungarian regime being slightly more 'liberal' and the Bulgarian being slightly more 'governmental' oriented.

Those differences make it hard to find generic European points of understanding by which the various regimes can be evaluated and, as an extension thereof, at least partly harmonised. The challenge is to find a commonly accepted framework for the regulation of citizens and civic organisations involved in public benefit activities. A possible starting point for reflections on this could be the European Convention of Human Rights. The insights this could generate in relation to 'public benefit law' still have to be explored. Within the EU, the comparative analyses and country descriptions of the EC's Communication "Promoting the Role of Voluntary Organisations and Foundations in Europe" [COM (1997) 241 final] seem a valuable point of reference for further work. The same holds for the bulk of preparatory work for the related Statute for a European Association, complementing the already existing ones for a European Co-operative Society and a European Mutual.

Dr. Wino van Veen
Associate professor at the Faculty of Law,
Vrije Universiteit Amsterdam; Research
associate and legal counsel notarial law,
Baker&McKenzie, Amsterdam/Kathrin
Komp

Further reading: Wino van Veen:
*Public Benefit from a Comparative
Perspective*. In: P. Bater/F. Hondius/
P. Lieber: *The Tax Treatment of
NGOs*. London 2004: 239–252

The Observatory is currently commissioning a comparative analysis of selected issues of the tax treatment and legal status of associations and foundations in the EU. The results of this study will be published in the next issue of our Newsletter.

Social Services in Europe

Social Services in Portugal

Background

For five centuries now there has been one institution named *Misericórdia*, catholic church-related, that provided, during the last centuries, social informal care mainly on the grounds of health care, the combat of poverty and feeding hungry people. This institution is highly recognised and it is since then widely spread around the country.

The responsibility to provide social care is shared between the state and families and solidarity shared among the population (formal and informal care). The equipment and social service institutions owned by the state and local municipalities cover about 10% of the total of the services provided to society.

The remaining 90% are provided by private non-profit institutions (mainly *misericórdias* and foundations).

From the Portuguese political revolution of April 1974 on, there has been a rapid growth of the number of non-profit institutions mainly under the statute of foundations providing social care services such as Caritas and the so-called *Centros Sociais Paroquiais* (Parish Social Centres), also catholic church-related, the latter being the bigger organisation in number of institutions. Many other institutions were estab-

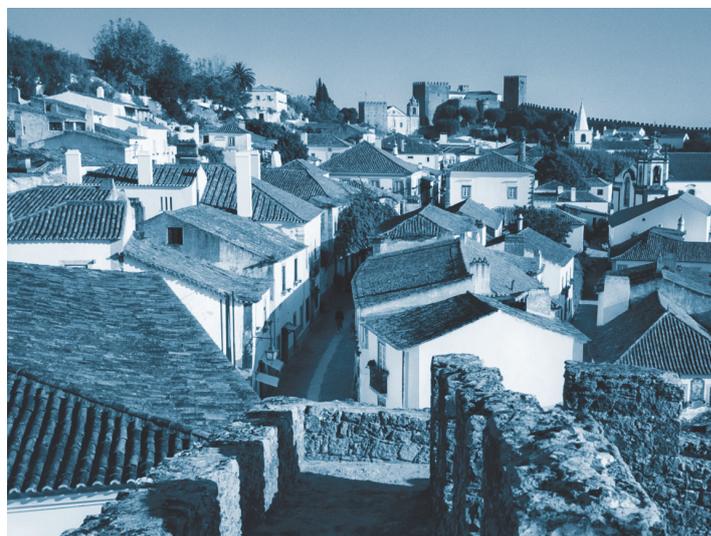
lished providing specialised care for people with disabilities and drugs addiction. More recently some private commercial institutions offering health care services have appeared in the market.

Legal framework and forms of organisations of the social services institutions

The Portuguese Constitution guarantees several social rights, namely the right to social security and pensions and a certain standard of living, child and elderly care.

The legal framework organising the formal provision of social care services was defined in the Decree-Law 519 of 1979, which was complemented by various other government resolutions with the aim to improve legislation, to acknowledge new forms of care services of the required profile specific to the new institutions in order to become social services providers and to improve the terms and conditions of the financial support as stipulated in Resolution nº 75 of 1992.

There are three umbrella organisations: *Confederação Nacional das Instituições de Solidariedade (CNIS)* (Solidarity Institutions National Confederation), *União das Misericórdias (UMP)* (Union of Portuguese Misericórdias) and *União das Mutualidades* (Union of Mutual Benefit Associations/Societies), all being members of the *Conselho Económico e Social (CES)* (Social Economic Council) and having signed a Pact of Cooperation with the State and representing all the individual different institutions.



Óbidos



Guimarães

The contacts with the government are made through the Ministry of Labour and Social Security. The three umbrella organisations are normally called to discuss and sign cooperation agreements with the government. These three organisations are also involved with the unions bargaining and signing the labour collective agreements which are then applied to the individual institutions.

Different mechanisms of cooperation exist at regional and local level to facilitate the contact of the individual institutions with the government.

Type of services

The goal has been to offer a variety of services to choose from in order to better match the needs of the users.

The services regulated by the existing legal framework include: day care for children below school age, youth welfare services for children up to 12 years of age during primary school period, home and respite care for disabled children, day care for the disabled, homes for psychiatric patients, home help, meal provision, family support service, day care for the homeless, clubs for the elderly, home and respite care for the elderly, residential homes, shelters and night shelters for the homeless, day and night care for drug addicts and health care including hospitals, long term care and medical home care

Financing of the social services

The institutions created by the state and local municipalities are

obviously fully financed by the state but they are a minority in the universe of the institutions providing social care. The third sector institutions are financed for approximately 60% of the operating costs by the state, the remaining costs have to be supported by the families of the users, by the users themselves or by resources of the institution itself.

To receive public financial support the private and social institutions – so called *Instituições Particulares de Solidariedade Social (IPSS)* – are obliged to sign specific cooperation agreements setting out the type of services provided and the corresponding financial amount to be paid by the state taking into consideration the age of the user and her/his individual needs.

The facilities and equipments owned and managed by private non-profit institutions are subsidised by the state and other contributions from enterprises and also private donations. Part of these funds are obtained from taxes applied to the official lottery and *lo-to* which is controlled by the state related-institution *Santa Casa da Misericórdia* that is responsible for organising the lottery and other 'social games'. A significant part of the funds is also obtained through taxation of the profits from the gambling Casinos.

Cooperation from volunteers

One particular characteristic of the non-profit social services institutions that generates civic added value is the involvement of volunteers. The forms of their involvement are extremely diverse, ranging from people with responsibilities in the manage-

ment of non-profit institutions to neighbourhood help. The appropriate legal framework conditions of volunteers participation in the institutions are being defined.

Present problems and future challenges

Three major problems are affecting the social care services system in Portugal:

- 1) The lack of facilities and equipments is felt not only in the big urban metropolitan areas but mainly in the communities located in the interior part of the country.
- 2) The insufficient amount of state subsidies is squeezing the financial sustainability of the majority of the non-profit institutions and restricting the desirable development of the quality and quantity of services provided which end up with big waiting lists, mainly affecting the elderly.
- 3) A more effective networking and cooperation of all actors at local and regional level (municipality and regional authorities, government through social security system and the third sector institutions) is essential in order to achieve high levels of social cohesion and inclusion on the whole territory.

Future challenges and trends

The immediate challenges confronting the government and the civil society are the following:

- 1) New legislation in order to guarantee the access of all citizens to the social benefits granted by the Portuguese Constitution, in line with the European Social Model.
- 2) Full recognition of the non-profit institutions as effective and active partners in the definition of the social policies.
- 3) The adequate and timely response in equipment, services and qualified staff to meet the increasing needs of the elderly due to the ageing of the population in the next decades.

A persistent trend being experienced by Portugal – a low economic growth since 2001 and a forecasted economic prosperity well below expectations until the end of this

decade – will bring severe negative consequences to the unemployment rate with the correspondent increasing difficulties faced by the government to assure an acceptable level of response by the instruments of the social policy.

- 4) The government needs to create a new National Development Programme for Social Welfare. The aim of the programme should be to safeguard the availability of the core services, the development of new and complemented services structures, to refine the application of the automatic stabilisers and to guarantee access of all to the welfare system.

Dr. José Custódio Leirião
E-mail: jleiriao@mail.telepac.pt, head of department for European and International Relations, CNIS, and member of the European Economic and Social Committee, in cooperation with Francisco Crespo, President, CNIS, and Dr. Vitor José Melícias Lopes, President, UMP

News from the Observatory

ICSW conference: "The Future of the European Social Model"

This was the title of an international conference hosted by the European Region of the International Council for Social Welfare (ICSW) in Lucerne (1–3 June 2005). The German Association for Public and Private Welfare and the Observatory participated in this event in a variety of functions. Before the backdrop of the many challenges facing the European social model – demographic change, persistent levels of mass unemployment, over-indebtedness of public budgets and ever increasing international economic integration – two main issues were discussed in the plenary sessions and workshops: What do these challenges mean for the development of social rights, social justice and individual responsibility? How do we understand social cohesion and integration today, and what does this mean for the social model at European, national and regional levels?

Further information and a background conference paper can be found at <http://www.icsw.social-switzerland-socialeurope.org/>. An extensive report will be published in the next edition of the Newsletter.

Policy monitoring, analysis and consultancy in the field of social services – the start of an international network

Since mid 2004, an informal group of institutions from Austria, Belgium, the Czech Republic, Finland, Germany, Great Britain, the Netherlands and Spain has joined forces with the Observatory with the aim of monitoring and analysing political activity and of providing political consultancy in the field of social services. The main objective of cooperation in the coming months will be to exchange information on political processes, on the persons and institutions involved, and on current developments in the relevant fields from the various national points of view, particularly on topics of European dimension that are of interest to all partners. The further activities of the "Network on European Social Policy and Funding", which was given its name in March 2005, will be decided on early in 2006. Additional information can be found at our project website under the heading "Aktuelles".

Second project phase

At the beginning of 2005, the Observatory for the Development of Social Services in Europe entered its second project phase, which will last until the end of 2007. In addition to continuing our regular activities, we will now be working towards greater networking at European level. The Network on European Social Policy and Funding (see above) represents a first step in this direction.

At the moment, the Observatory has the following staff:

The Monitoring Unit at the Institute for Social Work and Social Education (Frankfurt am Main) consists of Mathias Maucher and Anna Englaender as research officers, Kathrin Komp as research assistant and Barbara Braun-Schönwandt as administrative assistant. Beatrix Holzer left the Observatory at the end of 2004.

The Office of the Coordination Group at the German Association for Public and Private Wel-

fare (Berlin) is staffed by Cornelia Markowski as research officer and Hanna Steidle as student assistant.

We take this opportunity to introduce the two new employees, Ms. Englaender and Ms. Steidle.



Ms. Englaender studied law at the universities of Passau and Bonn. In the course of her advanced studies at the University of Freiburg, she prepared a diploma on the Christian Ministry Studies and Christian Social Work, and she examined the relationship between EU legislation and the social services offered by Caritas. She did her probationary legal training at the Düsseldorf Higher Regional Court. Her work at the Monitoring Unit currently focuses on the proposed EU services directive as well as on cross-border provision of social services and cooperation and networking in border regions.



Ms. Steidle studied administrative sciences in Potsdam. She majored in European social policy, migration and asylum policy, and international policy. Her diploma dissertation dealt with representation of the interests of the German federations of non-government welfare associations in the EU. During her studies, Ms. Steidle worked half-time for a Member of European Parliament.

New and up-to-date project website

Our project website has been updated and given a completely new look. Until now our projects had been listed chronologically according to the year. In an effort to increase clarity and user friendliness, we have now rearranged them according to topics. The seven new topic areas will also show the connection between the individual projects carried out since 1999. The website includes descriptions of the projects carried out in 2004 and the titles of this year's new projects. From now on we will also provide a presentation of the Observatory and a short description of all the individual projects in English.

Current events

Just click
www.soziale-dienste-in-europa.de/

New publications on topics of interest to the Observatory

In the last few months there have been several new publications in connection with the Open Method of Coordination (OMC) – already a topic of discussion here at the Observatory – and with services of general interest. Issue 5–6/2005 of the journal "Sozialer Fortschritt" includes two contributions by Mathias Maucher: one on the Communication from the EU Commission on "Social and Health Services of General Interest" and a second one on the OMC. The latter was also the topic of a Master's dissertation by Michael Miebach: "When OMC hits home: How do the United Kingdom and Germany work with the Open Method of Coordination in the area of social inclusion domestically?", MSc. dissertation, London School of Economics and Political Science (LSE), September 2004, available at our website.

Publications on the **European Social Model** offer views from a broader angle – for instance Brigita Schmögnerová's report on "The European Social Model. Reconstruction or Deconstruction? A View from a Newcomer". Bonn: FES, 2005, <http://library.fes.de/pdf-files/id/02838.pdf>, and "Das europäische Sozialmodell. Auf dem Weg zum transnationalen Sozialstaat" [The European Social Model.

D a t e s

July

4–6/Edinburgh, Great Britain: "Putting People First: Partnership and Performance in Social Care and Health in a Changing Europe". European Social Network. Information: phone + 44 (0)1273 549817 E-mail: sarah.wellburn@socialeurope.com <http://www.socialeurope.com/edinburgh/>

August

25–27/Neuchâtel, Switzerland: AGE05 – International Sociological Congress on "Health and Aging". Swiss Health Observatory Information: phone +41 (0)32 713 60 45 E-mail: age05@bfs.admin.ch <http://www.age05.ch>

29 Aug.–1 Sept./Gdańsk, Poland: TISSA 2005 – "Local Social Policy and Social Work – Perspectives, Activities, and Partners in Civil Society". The international "Social Work & Society" Academy. Information: <http://tissa.sic.to/pages/plenum2005.html>

September

15–16/Utrecht, The Netherlands: Conference on "Differences in Life Cycles and Social Security". European Institute of Social Security. Information: phone +31 (0)13 466 3139 E-mail: EISS2005@home.nl <http://www.nisz.nl/>

21–22/La Valetta, Malta: Conference on "Social Capital". The Social Capital Foundation. Information: E-mail: conferences@socialcapital-foundation.org <http://www.socialcapital-foundation.org/conferences/synopsis.htm>

22–23/Trento, Italy: Conference on Local Development and Governance in Central, East and South-East Europe. OECD. Information: phone +39 0461 277 616 E-mail: elisa.campestrin@oecd.org <http://www.oecd.org/cfe/LED>

November

9–10/Nuremberg: ConSozial 2005. Specialised trade fair and congress for the social market in Germany. Information: <http://www.consozial.de>



Cécile Helmryd, European Commission, DG Internal Market, gives a speech to members of the special committee on "International Cooperation and European Integration" of the German Association for Public and Private Welfare in Brussels.

Towards a trans-national welfare state], published by Hartmut Kaelble and Günther Schmid as year-book of the WZB [Social Science Research Center Berlin]. Berlin: edition sigma, 2004. (On this topic, cf. also the report of events below).

A comparative view of social work in various countries can be found in the teaching units of the "European Modules", which can be downloaded from cms.euromodule.com, and in the second volume of the series "Ausbildung für soziale Berufe in Europa" [Training for the social professions in Europe] (ISS-Pontifex 2/2005) edited by Franz Hamburger et al. This publication, which includes articles about Norway, Sweden, Ireland, Denmark, Latvia, Poland, Slovakia, Croatia, Bulgaria, Macedonia, Greece and Spain, is available for Euro 12.40 from the ISS (address information in imprint section).

A broad range of aspects on the topic of social services can be found in the collection published by Christoph Linzbach et al. "Die Zukunft der sozialen Dienste vor der Europäischen Herausforderung" [The future of social services facing the European challenge] (Baden-Baden: NOMOS, 2005) and in Peter Herrmann's publication "Sozialmanagement in Europa: Herausforderungen verstehen, Strukturen kennen, Vorteile nutzen" [Social management in Europe: understanding the challenges, knowing the structures, using the advantages] (Baden-Baden: NOMOS, 2005).

The documentation of a meeting held in early June 2004 (Frankfurt am Main, 6–10 June 2004) within the scope of "Social Dialogue in Central Europe" a series of events organised jointly by the German Association for Public and Private Welfare, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and changing partners in Poland, Slovakia and Hungary since 2001, has recently been published in German and English: "Social Dialogue in Central Europe – Sharing experience of social services with the new EU Member States". This publication is available from the Deutscher Verein e.V., Dep. International Social Work (address information in imprint section).

Events of the German Association for Public and Private Welfare in Brussels on 26 and 27 April 2005: First-hand information on social services

The special committee on "International Cooperation and European Integration" of the German Association for Public and Private Welfare met in Brussels on 26 April 2005. On 27 April 2005, the Association, together with Berlinpolis and with the gracious support of the German Federal Ministry for Family Af-

fairs, Senior Citizens, Women and Youth, organised a discussion on "Germany in Europe. The future of the European social model – the debate on the services directive and on social services of general interest".

Experts from the European Commission and from the European Parliament spoke at both events. Members of the committee discussed with Cécile Helmryd, DG Internal Market and Services (pictured here) and Jérôme Vignon, Director for Social Protection and Social Integration at DG Employment, Social Affairs and Equal Opportunities, both of the European Commission, as well as with Simon Wilson, director of the Platform of European Social NGOs. The main speaker on 27 April 2005 was MEP Evelyne Gebhardt, who presented her report as European Parliament rapporteur on the Commission's proposal for a directive on services in the internal market.

The most important information made public during these two days was the fact that the European Commission Communication on Health and Social Services should not be expected before autumn at the earliest, if at all. A documentation of the discussions of 27 April 2005 can be requested by e-mail from the German Association for Public and Private Welfare. Please contact: Haak@deutscher-verein.de.

Im print

Publisher:

Institute for Social Work and Social Education
Observatory for the Development of Social Services in Europe
Hans-Georg Weigel (Director)
Zeilweg 42
D-60439 Frankfurt a. M.

Editor:

Kathrin Komp
E-mail: kathrin.komp@iss-ffm.de

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

Agencies responsible for the Observatory are:

Institute for Social Work and Social Education
Monitoring Unit
Zeilweg 42
D-60439 Frankfurt a. M.
Phone: +49-69-9 57 89-0
Fax: +49-69-9 57 89-1 90
E-mail: info@iss-ffm.de
Homepage: www.iss-ffm.de

German Association of Public and Private Welfare
Office of the Co-ordination Group
Michaelkirchstr. 17/18
D-10179 Berlin
Phone: +49-30-62 98-0
Fax: +49-30-6 29 80-3 51
E-mail: kontakt@deutscher-verein.de
Homepage: www.deutscher-verein.de

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: A Vitamin
Kreativagentur GmbH, Berlin

Print: Druckerei Walch

Translation: Nicole Gentz, Berlin

Circulation:
German: 7,100
English: 900

Date of publication:
June 2005

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.



**Observatory for the
Development of Social Services
in Europe**