

Position-Paper of the German Association of public and private welfare on the Communication of the European Commission

„Services of General Interest, including Social Services of General Interest: A New European Commitment“

COM(2007) 725 final, 20th November 2007

The European Commission has presented its report on the state of development of the European Single market in November 2007. In one of the accompanying documents the commission has analysed the development of the General interest and the social services.

In view of the revised Lisbon-strategy in its last cycle of the programme the German Association assesses the report's conclusions focussing the framework for the social services in Germany and the strengthening of social cohesion. This position paper was compiled by the Committee "International cooperation and European integration" and passed by the steering group of the German Association for public and private Welfare at the 12th March 2008.

The present Communication on services of general interest is based on a mandate given by the European Council to the European Commission in spring 2002 (Barcelona) to examine the question if there is a need for a consolidation or European-wide regulation of the principles and conditions for services of general interest in Europe, especially by means of a horizontal legislative framework. The Commission launched a public consultation process, in which the German Association took part.¹ Moreover, the German Association provided an opinion on the Commission's "White Paper on Services of General Interest".² Subsequently, the efforts to achieve an open and fully functioning Single market were enhanced by the "Citizens' Agenda" of May 2006.³ The strategic agenda specified the aims of solidarity, opportunity, access, and sustainability, and announced a fundamental review of the Single market for 2007, which was presented with the so-called Single Market Review.

1 DV 21/03 of 9th September 2003 - Position paper of the German Association on the "Green Paper on Services of General Interest", COM(2003) 270 final, 21st May 2003, NDV 2003, pp. 452 et seq.

2 DV 19/04 of 6th October 2004 - Position paper of the German Association on the "White Paper on Services of General Interest", COM(2004) 374 final, of 12th May 2004, NDV 2004, pp. 397 et seq.

3 Communication from the European Commission on "A Citizens' Agenda - Delivering Results for Europe", COM(2006) 211 final, of 10th May 2006.

In June 2007, in the context of the debate on the European Constitution, the Member States agreed that a Protocol on Services of General Interest⁴ should be attached to the so-called Treaty of Lisbon.

In the meantime, with regard to selected sectors of the services of general interest,⁵ the European Commission has published a number of specific measures. It presented communications and directives on structural aspects of the services of general interest, e.g. concerning Public-Private Partnerships (PPP) and European rules on State aid and public procurement.

The document which has been most relevant for the German Association is the Communication on Social Services⁶ presented by the Commission in April 2006. The German Association took part in different consultations⁷ and studies to debate on and evaluate this document.

1. The German Association's assessment of the report to review the Single market⁸

The report presented in November 2007 is a stocktaking of the European Single market, as one of the fundamental pillars of the European Communities. The Single market was established by the Maastricht Treaty in 1992. Since that time, the European bodies have been working on the full implementation of the market freedoms.

4 Annex to the Presidency Conclusions, European Council (Brussels), of 21st/22nd June 2007, footnote 12.

5 Telecommunications, energy, transport and postal services, etc.

6 Communication from the European Commission „Implementing the Community Lisbon programme: Social Services of general interest in the European Union“, COM(2006) 177 final, of 26th April 2006.

7 Cf. DV 42/06 of 12th December 2006 - Response from the German Association on the Social Protection Committee's questionnaire on social services of general interest.

8 Communication from the Commission „A single market for 21st century Europe“, COM(2007) 724 final, of 20th November 2007.

The report for the first time takes a closer look at the social implications of the Single market. The German Association appreciates this focus. In the opinion of the German Association, this approach in the Single Market Report, i.e. addressing not only the chances but also the adaptation of difficulties and “legitimate concerns” of citizens and consumers caused by this rapid change, constitutes a major step forward towards building a social Europe.

With a view to the aim of the Lisbon Strategy that economic, employment and social policies should be interrelated, the German Association stresses that the rules in the field of services of general interest should be evaluated not only in relation to their effects on economic policy, but in

relation to their effects on social policy as well. From the forthcoming new assessment of the Lisbon Strategy in mid-2008, in conjunction with the consultation on social reality and the Communication on Services of General Interest of November 2007, it will be seen how much of this self-professed aim has been achieved during the last few years.

In the opinion of the German Association, we should keep in mind that the development of the “social dimension” of Europe implies much more than the development of a general interest. Social Services (of general interest) serve more far-reaching aims than other network industries.⁹ E.g. they are aimed at achieving solidarity with the weakest and vulnerable in society, make a major contribution to equal treatment of individuals, equal opportunities, and chances of participation, and have a key role in protecting fundamental rights, namely human dignity.

What is beyond doubt is the statement in the Single Market Report of the European Commission that “efficient and innovative services” at fair prices will certainly benefit consumers in the EU, as long as their quality and their general accessibility are ensured. The same is true for the strengthening of the European Single market against unwanted effects in globalised economic areas. What is also beyond doubt is the fact that “efficient and innovative services” constantly require adaptations to changing societal structures and needs.

However, the required adaptation of the legal framework for the services sector and the right of establishment must be primarily aimed at benefiting the citizens of the European Union. What this doesn't mean is that the citizens should be reduced to their single function of consumers, or users of services or products, as has very much been the case in the Single Market Report. If we want to “reinvigorate the support of EU citizens for the EU project” and if we want EU measures to meet with wider acceptance (as demanded by the “Citizens Agenda”), we must take into consideration what implications the reforms and modernisation efforts of Single market structures have on day-

to-day life, and on the social environment of citizens. This requires that any reform efforts must be sensitive to the specific characteristics of the different service sectors, e.g. the social services sector.

Quality and accessibility of services (regarding spatial, financial and administrative obstacles for the users) must be the aim of all modernisation efforts. In the field of social services of general interest, the mechanisms of the free market cannot adequately ensure that this aim is achieved. Because of the particularities of social services, the supply-and-demand system of the free market would not work, especially for those sections of the population who cannot create a demand unless they are aided by the State. The same applies to the delivery of social services in regions with weak infrastructure. In case of market failure without State compensation, the worst affected would be those who actually need the special support and protection of our society. In the opinion of the German Association, ensuring the protection of those parts of the population - i.e. deprived children, youths and families, person with handicaps, people with addiction problems or chronic disease, as well as the elderly - and thus making it accessible for everyone without exception, is the core element of a social Europe.

The Commission rightly ascertains that social services of general interest, in order to be able to sustainably meet their mandate to support those in need and in order to develop further, are highly dependent on public funding. If the European State aid rules are applied, now as before, the public authorities and non-profit providers of social services face considerable legal uncertainties. The Commission's efforts to ensure correct application of law, e.g. of European legislation on State aid, are supported by the German Association through its own activities.¹⁰ The German Association offers to cooperate as a working partner in the assessment of the implementation of the European regulations on State aid, within the framework of the 1st report cycle on the “Monti Package”. Furthermore, the German Association demands continuing and thorough development of European law on State aid. To clarify legal questions, the European Commission should describe in detail how the control of preconditions for State aid will be implemented, e.g. by publishing a list of criteria.

2. The German Association's assessment of the Communication on services of general interest, including social services of general interest: a new European commitment

The missions of services of general interest

The German Association agrees to the Commission's statement in the 2007 Single Market Report that services of ge-

⁹ Telecommunications, energy, transport and postal services, etc.

¹⁰ DV 35/06, „Arbeits- und Orientierungspapier des Deutschen Vereins zum europäischen Beihilferecht“ of 24th November 2006, NDV 2007, pp. 7 et. seq.

neral economic interest as well as non-economic services of general interest are indispensable for the daily lives of EU citizens. In this context, the German Association welcomes the Protocol No. 9 (on services of general interest) annexed to the new Treaty of Lisbon. The Protocol stipulates, on the basis of shared values of the European Union and the Member States, the following provisions:

- wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest (close demand orientation, delegation, financial and economic conditions for the provision of services);
- diversity between various services of general economic interest, depending on the differences in the needs and preferences of users;
- a high level of quality, safety and affordability of the services, equal treatment of users, promotion of universal access and of user rights.

Based on these provisions, in conjunction with the principles of subsidiarity and proportionality, it must always be checked if the initiatives taken by the EU, which intervene into the Member States' operation of services of general interest, are justified, or if possibilities of action at national, regional and local level should have priority. The German Association shares the Commission's point of view that in many areas of social policy, namely the policies concerning families, children, youth and senior citizens, the major share of responsibility for the scope and organisation of services is retained by the Member States. The German Association holds the view that services in the educational sector, namely concerning school, vocational training and further education, should be counted in that category as well.

The missions of social services of general interest

Social and healthcare services of general interest were given a prominent position in the Single Market Review, as the report devoted to them a special sub-paragraph in its annex on services of general interest. At the same time, it can be seen that attention has increasingly been drawn to social services of general interest in other fields of policy as well, in which they had not been considered previously, e.g. the promotion of active inclusion of people furthest from the labour market.¹¹ The German Association regards it as a positive development that social services are given special consideration, and that they are networking with other fields of policy.

On the other hand, the discourse which had already started about social services, which, except for the areas of the Services Directive and the Communication on Social Services of 2006, had taken its own development, has been slowed down and pushed into the background by being incorporated into the context of the Single market policy.

¹¹ Communication from the European Commission: Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market, COM(2007) 620 final, of 17th October 2007.

The German Association suggests that the political process on the reform of social services should, to a certain extent, be shifted back to the sphere of responsibility of the Directorate General for Employment, Social Affairs and Equal Opportunities.

In any case, the German Association wants to continue the process of clarification concerning social services. With regard to the list of aims, functions and characteristics of social services as specified in the Communication, the German Association would like to point out the following aspects:

We appreciate that the European Commission builds on its assessments on social services specified in Part I of the Communication of 2006.

The list of characteristics has been expanded. E.g. the importance of the preventive role of social services has been recognised for the first time. The same applies to the non-profit aspect, which has been explicitly picked up (regulations for non-profit providers) as a typical feature of social services (of general interest). What has unfortunately not been picked up are the statements on practical procedures, e.g. concerning the delegation of missions, when technical specifications or flexible descriptions of the aim to be achieved by the service provider meets the requirement of the Commission for transparency in the framework of public procurement.¹² Therefore, in view of these statements, the question remains to what extent Community law will be consistently adapted to those specific features.

The German Association points out that the delivery of social services in Germany is usually characterized by the so-called "purchasing model" based on the social laws, even though that triangle relationship is basically compatible with European competition law. This constellation means that there is not just an exchange relationship between the service provider and the beneficiary, but that the law requires the involvement of a funding agency as well.

If the European Commission still insists that social services comprise only the fields of social housing, childcare and support of families and persons in need,¹³ this definition, from the point of view of the German Association, is too narrow. Social services do not only serve the purpose of assisting persons faced by crises or who are in dire need. Rather, it is their task to enhance the personal development of people and the development of their personality and talents, and to empower all people to participate in society to the best of their individual abilities.

Moreover, the German Association claims that the integrating effect of social services should not only refer to "social

¹² Communication from the European Commission: Implementing the Community Lisbon programme: Social services of general interest in the European Union, COM(2006) 177, para. 2.2.1.

¹³ Communication from the European Commission: Implementing the Community Lisbon programme: Social services of general interest in the European Union, COM(2006) 177.

cohesion" of society as a whole, but that equal attention should be given to their socially inclusive effect on the individual person. Social services empower disadvantaged persons as well, and in particular, to participate in social life. This brings advantages for the cohesion of society, but first of all, it promotes social inclusion of the individual. Social services promote active help towards self-help. They help to avoid permanent or temporary dependence on monetary welfare assistance.

To complement the list of characteristics of social services, the German Association once again points to the role of social services in responding to new needs, or to crisis situations of individuals or groups of persons resulting from societal evolution (demographic aging, new family structures caused by higher mobility, structural change towards the knowledge society, etc.), where they are a driving force for the development of innovative approaches to provide help. This characteristic feature has caused the development of many new types of services, e.g. integrated and networked services. Service providers have begun to pay more and more attention to the living environment, e.g. the family of a person in need, in order to provide holistic and sustainable help.

3. Conclusion

Against the background of these comments, the debate on the principles and basic conditions of social services of general interest has to continue over the next few years. Focussing specifically on social services of general interest when evaluating the progress of the implementation of the Single market in Europe, is a valuable first step on the part of the European Commission.

Still, it is imperative to include service providers as well as users in this process. Social services have a direct impact on the personal living situation of the individual. Therefore, it is the social work at local level, i.e. from the ranks of civil society, which has the professional competence to assess the modalities required for social services, and what basic conditions they have to meet in order to cover the needs of the users. This premise should be taken into account if we want to create a Europe close to the citizen, which meets its challenges as a Social Union.

The German Association is a platform of public authorities and non-profit organisations as well as their facilities, the Federal states und representatives of scientific institutions from all areas of social work and social policy. It accompanies and frames the development of policies e. g. for children and young people, families and elderly, social security systems and care and rehabilitation services.