

Opinion of the German Association on the European Pillar of Social Rights

The opinion (DV 12/17) was adopted on 6 December 2017.

**Deutscher Verein für öffentliche und private Fürsorge e.V.
(German Association for Public and Private Welfare) – the forum for
the social sector since 1880.**

The German Association for Public and Private Welfare (Deutscher Verein für öffentliche und private Fürsorge e.V.) is the joint forum of municipalities and non-statutory social welfare organisations and their social services in Germany, the Länder (federal states) and academia in all fields of social work and social policy. Through its experience and expertise, it monitors and shapes policy and legislation in relation to children, young people and families, the social insurance system, social assistance, assistance for the elderly, care and rehabilitation, social volunteering, the planning and management of social work and social services as well as international and European social policy and social legislation.



Deutscher Verein
für öffentliche
und private Fürsorge e.V.

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The German Association for Public and Private Welfare (Deutscher Verein für öffentliche und private Fürsorge e.V.) German supports the European Commission's aim of achieving upward social convergence in the sense of improved economic and social cohesion in the EU, via the "European Pillar of Social Rights" (EPSR). The German Association calls on the Member States to strive for social policy convergence of European social systems on a high level of standards and to involve regional and local actors, social insurance providers as well as actors in civil society, for example non-statutory social welfare organisations (Freie Wohlfahrtspflege), in the process.

Preliminary remarks

In his State of the European Union address in September 2015, European Commission President Jean-Claude Juncker announced the development of a "European Pillar of Social Rights"¹. On 8 March 2016, the European Commission launched a "Consultation on a European Pillar of Social Rights"² and, to that end, published a "First preliminary outline of a European Pillar of Social Rights"³. The German Association took part in this consultation via its Opinion of 27 September 2016⁴. On 26 April 2017, the European Commission adopted the "European Pillar of Social Rights" as a Commission Recommendation⁵. At the same time, it proposed to the European Parliament and to the Council⁶ that there should be a joint "interinstitutional proclamation" of the text by the Commission, Council and Parliament. The joint proclamation was made on 17 November 2017, at the Social Summit in Sweden⁷. The European Pillar of Social Rights is intended "to serve as a guide towards efficient employment and social outcomes" and operate in "ensuring better enactment and implementation of social rights"⁸.

Strengthening social policy in the European Union and Member States

With 28 Member States, the European Union is heterogeneous in both economic and social terms. As a common economic and social area, the economic and social problems of any one Member State have direct or indirect consequences

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1 http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm (9 September 2015).

2 "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Launching a consultation on a European Pillar of Social Rights" of 8 March 2016, COM(2016) 127 final, http://eur-lex.europa.eu/resource.html?uri=cellar:bc4bab37-e5f2-11e5-8a50-01aa75ed71a1.0004.02/DOC_1&format=PDF.

3 Annex "First preliminary outline of a European Pillar of Social Rights", Annex 1 to COM(2016) 127 final, http://eur-lex.europa.eu/resource.html?uri=cellar:bc4bab37-e5f2-11e5-8a50-01aa75ed71a1.0004.02/DOC_2&format=PDF.

4 Opinion of the German Association on the Consultation on a European Pillar of Social Rights of 27 September 2016, NDV 2016, p. 558 ff.; <https://www.deutscher-verein.de/en/uploads/dateien-stab-internationales/dv-21-16-opinion-consultation-epsr.pdf>.

5 Commission Recommendation (EU) 2017/761 of 26 April 2017 on the European Pillar of Social Rights, Official Gazette of the European Union, L 113/56, 29.04.2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.113.01.0056.01.ENG&toc=OJ:L:2017:113:TOCE.

6 Proposal for an interinstitutional proclamation on the European Pillar of Social Rights, COM(2017) 251, 26.04.2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0251&qid=1512572791722&from=EN>

7 https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf

8 See Footnote 5.



for other Union members and for the Union as a whole. The current economic and financial crisis has led to greater divergence between EU Member States. In the assessment of the German Association, the imbalance between the economic and social policy structure of the European Union has contributed to the ongoing crisis. Acceptance of the European Union and overcoming these problems depends among other things on the social situation, living standards and subsistence protection of EU citizens. Setting stronger social policy priorities in the European Union and common European principles for national welfare provision systems can contribute to greater acceptance of the European Union. In the view of the German Association, a stronger socio-political dimension in the European Union is to be understood as a long-term, effective investment in the competitiveness of the Union and in society, as was already recognised by the European Commission in 2013 with its Social Investment Package. Principles for the provision of high-quality, accessible and affordable services form the basis for reliable and available assistance in difficult life situations and for disadvantaged groups, whilst also increasing their participation in the labour market, particularly in deprived areas. At the same time, welfare provision systems contribute to realising the goals and values of the European Union (high levels of employment and social protection, high level of health care protection, equal opportunities for men and women, social and regional cohesion). The German Association emphasises that social policy is not only able to contribute to growth and employment, but should be a major focus of EU policy in its own right. Social services make an important contribution to enabling people to develop their potential and overcome social problems and thus secure the social pre-conditions for successful economic development. Welfare provision systems should function on a rights-based model⁹.

The German Association therefore repeats its call¹⁰ for strengthening the social dimension in the EU and also calls for greater use of existing instruments in focusing on urgent social problems in EU Member States. The German Association calls on the European Commission and Member States¹¹ to adopt the principles recommended by the European Economic and Social Committee (EESC) for effective and reliable welfare provision systems and further develop their welfare provision systems accordingly based on these principles: social protection floor, need, precise definition of aims, accessibility, proportionality, solidarity, personal responsibility, participation, structure, user's right to decide, legal certainty, public interest focus, transparency, "joined-up approach", level playing field, quality, coordination¹². To facilitate improvement of the social situation in the Member States, the German Association would once again¹³ wish to draw attention to the positive experiences Germany has had with the principle of subsidiarity, including the active role of civil society¹⁴, as well as solidarity in

9 See Footnote 4, p. 559

10 See Footnote 4, p. 559.

11 "Opinion of the German Association for strengthening the social dimension of EU policy – establishing effective and reliable social systems" of 15 December 2015, NDV 2016, p. 63 ff.; https://www.deutscher-verein.de/en/uploads/dateien-stab-internationales/dv-28-15_english.pdf.

12 "Opinion of the European Economic and Social Committee on the principles for effective and reliable welfare provision systems" of 17 September 2015 (SOC/520), <https://webapi.eesc.europa.eu/documentsanonymous/eesc-2015-01011-00-02-ac-tra-en.docx>.

13 See Footnote 4, p. 559.

14 In simplified terms, the principle of subsidiarity means: whatever the individual, the family, group or organisation is able to

the financing of welfare provision systems. The German Association calls on the Member States to strive for social policy convergence of European social systems on a high level of standards and to involve regional and local actors, social insurance providers as well as actors in civil society, for example non-statutory social welfare organisations (Freie Wohlfahrtspflege), in the process.

The European Pillar of Social Rights as an instrument for upward social convergence

With this in mind, the German Association supports the European Commission's aim of achieving upward social convergence in the sense of improved economic and social cohesion in the EU, via the "European Pillar of Social Rights" (EPSR)¹⁵. As part of the consultation, the German Association made reference to the fact that in many of the 20 policy domains of the proposed European Pillar of Social Rights the European Union assumes shared responsibility with the Member States for social policy and social cohesion (Article 4 (2) letters b, c TFEU) and furthermore supports and complements activities of the Member States in the area of social policy (Article 153 (1) TFEU). Whilst in some domains with respect to the workplace there is the possibility of issuing minimum guideline requirements, this is not possible, for example, with regard to the issue of combating social exclusion (Article 153 (2) letter b TFEU). Here, the European Union relies exclusively on measures in line with Article 153 (2) letter a) TFEU "designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States." The planned Pillar cannot define new responsibilities of the EU in individual political domains and cannot take precedence over the validity of the regulations in the treaties. The German Association has therefore called for the legal nature of the Pillar and the instrument chosen for its formulation to respect the social policy responsibilities of the Member States in accordance with the EU primary law¹⁶.

The German Association therefore welcomes the fact that on 26 April 2017 the European Commission chose the legal form of a "Commission Recommendation" in accordance with Article 292 TFEU¹⁷ for the European Pillar of Social Rights. According to Article 288 (5) TFEU, this recommendation has "no binding force". This means that it does not exert a legally binding effect over third parties, notably the Member States. At the same time, the Recommendation serves as a voluntary political commitment by the European Commission to the European Pillar of Social Rights and calls on the Member States on a political level, to collaborate and to implement it. The German Association therefore also

achieve independently may neither be appropriated by a higher authority nor by the state. It should be ensured that competence and taking responsibility by such persons should be recognised and utilised. This also includes an obligation on the state to assist individuals and subsidiary bodies, where required, in such a way that they can become self-supporting. The recognition of social initiatives as expressed through the subsidiarity principle facilitates the right to freedom of choice for the citizen in need. This has its roots in constitutional rights: respect for human dignity, freedom of the individual and the free development of his/her personality, freedom of religion.

¹⁵ See Footnote 4, p. 559.

¹⁶ See Footnote 4, p. 560.

¹⁷ Treaty on the Functioning of the European Union.



welcomes the fact that the Commission has also proposed to the European Parliament and the Council that there should be a joint “interinstitutional proclamation” of the text by the Commission, Council and Parliament. The joint proclamation was made on 17 November 2017, at the Social Summit in Sweden¹⁸. A proclamation of this kind is not envisaged in the European Treaties as a form of action (Article 288 TFEU) and accordingly does not engage any binding legal effect. However, it can achieve a heightened voluntary policy commitment of the three EU institutions to the goal of upward social convergence and to the principles formulated in the European Pillar of Social Rights. It is precisely because the European Pillar of Social Rights as a Recommendation is not legally binding and, for the reasons stated, is not intended to be so, that it requires a high degree of voluntary political commitment and focussed collaboration between actors to enable the new instrument to take effect in reality and to contribute to improved social policy in Europe.

In that regard, the decisive aspect for the German Association is not that the European Pillar of Social Rights exists as a text, but that it supports improvement in the realities of life for citizens through suitable implementation initiatives at EU level and in the Member States, thereby promoting improved economic and social cohesion in the EU¹⁹. Specifically, the European Commission is now called on to use the scope for action under the treaties and existing instruments such as the Open Method of Coordination (OMC) in the field of social policies (combating poverty and social exclusion and promoting fair and sustainable pensions and accessible, high-quality and sustainable healthcare and long-term care²⁰) and collaboration within the “Europe 2020” strategy process to strengthen social policy in the EU and in the Member States. The necessary consideration given to the different traditions and systems regarding social policy in the individual Member States is achieved through upholding Member State competencies and respecting the principles of subsidiarity and proportionality in EU initiatives. Successful implementation of the European Pillar of Social Rights is predicated on involving regional and local authority stakeholders, the social insurance providers and stakeholders in civil society, for example non-statutory social welfare organisations²¹. In this spirit, the German Association will monitor the implementation measures at EU level that are vital for the effectiveness of the European Pillar of Social Rights²².

The German Association points out that the language used in wording the principles formulated in the 20 domains for action overwhelmingly expresses these as rights, but that the Commission rightly sets out in the preamble to the European Pillar on Social Rights that these must “be implemented at both Union level and Member State level within their respective competences and in accordance with the principles of subsidiarity and proportionality”²³. The European

18 See Footnote 7.

19 See Footnote 4, p. 560.

20 See “The Future of the Social Open Method of Coordination (OMC) – Endorsement of the Opinion of the Social Protection Committee”, accepted on 17 June 2011 by the Council of the European Union, <http://data.consilium.europa.eu/doc/document/ST-10405-2011-INIT/en/pdf>.

21 See Footnote 4, p. 560.

22 See previously: Opinion of the German Association on the Proposal for a Directive on Work-Life Balance for Parents and Carers of 12 September 2017, NDV 2017, p. 492 ff.

23 See Footnote 5.

Pillar of Social Rights does not itself create any enforceable subjective entitlements to benefits for individual citizens. The German Association therefore considers the European Commission, and likewise the European Parliament and the Council, as subject to a particular responsibility to repeatedly make these contexts transparent for the public in their communication concerning the European Pillar of Social Rights, in order to counteract any false impressions. However, the German Association agrees with the view that social insurance systems should function on a rights-based model²⁴.

Notes on individual policy domains

In view of the above, the German Association, backed by its longstanding practical experience in Germany, would like to offer observations to the European Commission, the European Parliament, the Council and the Member States on the individual political domains outlined by the European Commission in the European Pillar on Social Rights.

9. *Work-Life Balance*: Measures to improve work-life balance benefit family members by contributing to an increased sense of well-being. Moreover, they can also raise levels of employment, particularly for women. In this regard, the German Association argues for work-life balance throughout a person's lifetime. This is because such a balance relates not solely to the period when raising children, but also constitutes a challenge when caring for older/dependent relatives. The German Association therefore calls for a significant time allowance²⁵ to enable a balance between working and caring. Needs-matched expansion of care offers is vital to balancing bringing up children with a career²⁶. In its Opinion on the Proposal for a Directive on Work-Life Balance for Parents and Carers, the German Association engaged in detail with the current proposals by the European Commission for implementing the European Pillar of Social Rights in this domain of action²⁷. It fundamentally welcomes the Commission's initiative, particularly the extension to family members in a care role and the stronger involvement of fathers, together with the linking of entitlement to release from work and remuneration. The German Association's view is that parental leave should be for a total of at least ten to twelve months paid in addition to maternity leave, with some part of this time being capable of being transferred to the respective other parent. Single-parent families should be put on an equal footing. The German Association endorses the claims for flexible working arrangements through to the end of the child's 12th year of life and a return to the "original pattern of work", but it envisages challenges for employers in imple-

24 See Footnote 4, p. 559.

25 Opinion of the German Association on the draft of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry for Labour and Social Affairs on legislation on improving compatibility between family, care and employment, NDV 2014, p. 466 ff.

26 Recommendations of the German Association on the public education and care for school age children from their first year in school to the end of the 14th year of age, NDV 2015, 199ff; Recommendations of the German Association on local family time policy, NDV 2013, p. 296 ff.

27 See Footnote 22.



menting this. With regard to the new care period, the German Association encourages expanding the circle of entitled relatives.

11. Childcare and support to children: The German Association recommends needs-appropriate, high-quality day-care provision, together with high-quality offers for education and childcare for school age children²⁸.

14. Minimum income: The German Association reiterates that the “Europe 2020” strategic objective to reduce poverty should be pursued in a reinforced manner. Minimum income schemes make a fundamental contribution to this cause. They can protect people against social exclusion and enable them to realise their individual potential. This approach is based on respecting the dignity of each and every human being and upon the basic concept of solidarity. These efforts need to be aimed at preventing people from falling below the poverty line in the first place, or at supporting them on their way out of (sometimes long-term) poverty.²⁹ The German Association endorses the observation by the EESC that “collective financing and legal safeguards [for minimum income schemes] sometimes need improving” in the Member States³⁰. Minimum income schemes can and should make a significant contribution in enabling participation³¹. The financial benefits in minimum income schemes must allow those entitled to benefits a degree of scope that enables them to undertake their own endeavours and activities, with a view to taking up employment³².

15. Old age income and pensions: A sustainable pensions system contributes to preventing poverty. On an individual level, it is primarily the assurance of a retirement income which facilitates a decent standard of living for the elderly³³. In Germany, in the view of the German Association, statutory pension insurance is the most important pillar in securing adequate retirement income. It is supplemented by the options for company and private pensions³⁴. The German Association took a critical view of the Commission’s consultation proposal to index the statutory pension age to trends in life expectancy by means of an automatic process³⁵. It therefore welcomes the fact that the Commission has not pursued this proposal further in presenting the European Pillar of Social Rights.

28 Recommendations of the German Association on the public education and care for school age children from their first year in school to the end of the 14th year of age, NDV 2015, p. 199 ff.; Recommendations of the German Association on local family time policy, NDV 2013, 296 ff.

29 Opinion of the German Association on the Conclusions of the Council of the European Union on Common Active Inclusion Principles to combat poverty more effectively, NDV 2009, p. 304 ff.; Opinion of the German Association on the European Platform against Poverty and Social Exclusion, NDV 2011, p. 152 ff.

30 See Footnote 11.

31 See Footnote 4, p. 561.

32 Recommendations of the German Association for further development of Basic Security Benefits for Job-Seekers (SGB II) of 12 September 2017, NDV 2017, 433, 438.

33 Opinion of the German Association on the European Commission’s White Paper “An Agenda for Adequate, Safe and Sustainable Pensions”, NDV 2012, 465 ff.; <https://www.deutscher-verein.de/en/uploads/dateien-stab-internationales/dv-16-12-white-paper-pensions.pdf>.

34 See Footnote 4, p. 561.

35 See Footnote 4, p. 561.

17. *Inclusion of people with disabilities:* In accordance with the UN Convention on the Rights of Persons with Disabilities (UN CRPD), which has not only been signed by EU Member States but also by the European Union itself, measures to strengthen the rights of people with disabilities as well as measures for inclusion are to be introduced. Although implementation of the UN CRPD contains major challenges for the signatory states, social systems must be geared toward persons with disabilities and suitably adapted in a way that ensures extensive participation³⁶. The German Association notes that the inclusion of people with disabilities is a key cross-sectoral task that needs to be taken appropriately into consideration when implementing the European Pillar of Social Rights in all 20 policy domains, and particularly in the domain of education and training³⁷.

18. *Long-term care:* In the course of demographic change across Europe, the number of people who need assistance and care in daily life is increasing. A guarantee of access to care services is fundamental. From the perspective of the German Association, people who require care should be able to live in their familiar/familial environment for as long as possible. This requires ensuring support in coping with everyday life, medical care, home care and social participation. In this regard, the decision on community care or in-patient provision of services must always be geared to the specific living conditions and needs of the individual. Community care at the local level requires framing conditions enabling the carer, particularly family members, to carry out that responsibility. Moreover, the prevention or reduction of long-term care is of great importance³⁸. From the perspective of the German Association, the coordination of cross-border long-term care provision should be regulated by the EU as soon as possible³⁹.

36 See Footnote 4, p. 561.

37 See also: Recommendations of the German Association: From Supported Schooling to Assisted Schooling in an Inclusive School System of 14 December 2016, NDV 2017, p. 59 ff.

38 "Adapt the care system to social structures! Recommendations of the German Association on the further development of care", NDV 2013, 385 ff.

39 See Footnote 4, p. 561; specifically: Opinion of the German Association on Reform of Regulation (EU) No. 883/2004 on Coordinating Social Security Systems of 13 June 2017, NDV 2017, p. 295 ff.

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