

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

**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.

Inhalt

Preliminary remarks	3
Socio-Political challenges in Europe	4
Principles for effective and reliable welfare provision systems	5
Suitable instruments for upward social convergence	6
Notes on individual political domains	7

The German Association calls for a stronger socio-political focus in the European Union, while preserving the social policy responsibilities in the Member States in accordance with EU primary law. To facilitate improvement of the social situation in the Member States, we would like to draw attention to the positive experiences Germany has had with the principle of subsidiarity, including the active role of civil society, as well as solidarity in the financing of welfare provision systems. The German Association supports the European Commission's objective of achieving upward social convergence with improved economic and social cohesion in the EU through the "European Pillar of Social Rights" (EPSR). The German Association calls on the Member States to strive for high-level social policy convergence of European welfare provision systems and to involve regional and local stakeholders, social insurance providers as well as stakeholders in civil society, for example non-statutory social welfare organisations, 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. The German Association for Public and Private Welfare made a contribution to the preliminary discussions with its "Opinion of the German Association for strengthening the social dimension of EU policy – establishing effective and reliable welfare provision systems"². It thereby demonstrated its support for the principles set forth by the European Economic and Social Committee in its opinion "Principles for effective and reliable welfare provision systems"³, calling for a stronger social dimension within the EU while preserving the social policy responsibilities in the Member States. The German Association urged the European Commission and Council to utilise existing European instruments for socio-political change in the Member States and formulate recommendations for minimum requirements in welfare provision systems. The German Association takes the view that the recommendations should ensure that specific conditions in individual Member States are taken into consideration and that existing standards are not downgraded.

On 8 March 2016, the European Commission initiated a "Consultation on a European Pillar of Social Rights"⁴ and also presented a "First preliminary outline of a European Pillar of Social Rights."⁵ Accordingly the Pillar should be founded on "a number of essential principles to support well-functioning and fair labour

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

2 DV 28/15 "Opinion of the German Association for strengthening the social dimension of EU policy – establishing effective and reliable welfare provision systems", adopted on 15 December 2015, https://www.deutscher-verein.de/en/uploads/dateien-stab-internationales/dv-28-15_english.pdf

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

4 "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" from 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

5 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



markets and welfare systems. Once established, the Pillar should become a reference framework to screen the employment and social performance of participating Member States, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence within the euro area.”⁶ On completion of the consultation process (deadline: end of December 2016) the European Commission will make a “final proposal” for the Pillar in early 2017.

Socio-Political challenges in Europe

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 one Member State have direct or indirect consequences for other Union members and for the Union as a whole. The current economic and financial crisis has led to greater differences between EU Member States. In the assessment of the German Association, inequalities in the economic, social-political and social policy structure of the European Union have contributed to the ongoing crisis. In particular, there has been a lack of adequate appraisal and consideration of the social consequences of fiscal policy decisions. A number of Member States have reduced their spending on social welfare provisions and social security, which, according to the OECD, has increased the hardship of the most vulnerable groups. Additionally, global developments such as increased migration from war-torn and crisis regions have intensified the challenges faced by individual Member States as well as the European Union itself. Acceptance of the European Union and the tackling of these problems are related among other things to 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. This furthermore promotes national social policy developments which help counteract uneven internal migration flows resulting from imbalances between Member States. The risk of the uneven internal migration of skilled labour (“brain drain”) is to be avoided, as is the risk of a concentration of migration to a few regions and municipalities in Europe.

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 and also increase labour market participation, particularly in deprived areas. At the same time welfare provision systems contribute to the achievement of 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 emphasizes that social policy can not only contribute to

⁶ See Fn. 4, p 8.

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 model.

The German Association therefore repeats its call⁷ 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.

Principles for effective and reliable welfare provision systems

The German Association calls on the European Commission and Member States⁸ 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, coordination⁹.

The German Association maintains the view that public responsibility is indispensable for providing reliable and sustainable social services¹⁰. This does not preclude free competition among service providers. Services can be provided under socialized market conditions that combine user's freedom of choice with security and reliability of the provision of services. An important prerequisite is that the public sector should take responsibility for ensuring the framework conditions. Reliable funding, but also the guarantee of free accessibility, is essential. Private funding, for example to finance social innovations, is also not ruled out, but should only complement, not replace, regular funding. In the "social law triangular relationship", which often occurs in Germany, service providers that meet the statutory (quality) criteria are entitled to get approval for providing the services. The user's right to choose is included in the social law triangular relationship, with the financing of social services remaining incumbent upon the public service provider and public purse. The social law triangular relationship thus represents a proven model for provision which promotes good quality through competition between providers and enables user-driven development of service provisions.

To facilitate improvement of the social situation in the Member States, the German Association would once again¹¹ like to draw attention to the positive experiences Germany has had with the principle of subsidiarity, including the ac-

7 See Fn. 2.

8 See Fn. 2.

9 See Fn. 3.

10 See Fn. 2.

11 See Fn. 2.

tive role of civil society¹², as well as solidarity in the financing of welfare provision systems. The German Association calls on Member States to strive for high-level social policy convergence of European welfare provision systems and to involve regional and local stakeholders, social insurance providers as well as stakeholders in civil society, for example non-statutory social welfare organisations, in the process.

Suitable instruments for upward social convergence

In its “First preliminary outline of a European Pillar of Social Rights”, the European Commission does not expand on high-level, structurally-oriented principles of good welfare provision systems. Instead it presents a range of “essential principles which should become common to participating Member States for the conduct of their employment and social policy”¹³. These essential principles should become a reference framework to screen the performance of participating Member States, to drive reforms at national level and, more specifically, serve as a compass for renewed convergence within the euro area¹⁴. The proposed principles do not concern structural and operational principles of welfare provision systems, but rather highlight individual technical points arising from twenty employment and social policy domains. Thereby – in contrast to what might be expected from the title “European Pillar of Social Rights” – it does not necessarily deal with individual rights; predominantly, technical principles and specific administrative policy goals relating to the individual domains are formulated.

The European Commission thereby makes some very detailed proposals, however leaves the overarching question about the legal status of the thus formulated principles unanswered in the “First preliminary outline”: “While various instruments can be considered to establish the Pillar, such as a Recommendation.”¹⁵ The Commission itself rightly points out the necessity to respect the social policy responsibilities in accordance with EU primary law: “Ultimately, the legal nature of the Pillar itself will need to take account of the scope and legal limitations at EU and euro area levels.”¹⁶ The German Association points out that in many of the 20 political domains, the European Union assumes shared responsibility with the Member States for social policy and social cohesion (Article 4 (2) Nos. b, c TFEU¹⁷) 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

12 In simplified form, the principle of subsidiarity means: Whatever the individual, the family, group or organisation achieves 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 utilized. The state remains obligated, where required, to assist individuals to become self-supporting. The recognition of social initiatives 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.

13 See Fn. 5, p 2.

14 See Fn. 5, p 2.

15 See Fn. 4, p 10.

16 See Fn. 4, p 10.

17 Treaty on the Functioning of the European Union.



to the issue of combating social exclusion (Article 153 (2 b) TFEU). Here, the European Union relies exclusively on measures in line with Article 153 (2 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.” According to Article 5 (3) TFEU, the European Union can also introduce initiatives to coordinate the social policies of the Member States. In the assessment of the German Association, the detailed formulations of the essential principles in the “First preliminary outline”, which in part are presented as if they were individual legal rights granted by the Member State, stand in contradiction to the degree of the binding nature of the Pillar regarding the regulations in the treaties. The planned Pillar cannot define new responsibilities of the EU in individual political domains and cannot ignore the validity of the regulations in the treaties. The German Association calls 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 law.

In the context of the treaty provisions, the German Association calls on the European Union to utilize existing instruments such as the Open Method of Coordination in the social policy area (tackling poverty and social exclusion, fair and sustainable pensions as well as the provision of accessible, high-quality and

sustainable health care and long-term care¹⁸) and for cooperation within the framework of the strategy “Europe 2020” to reinforce social policy in the EU and Member States. The aim is not a Europe-wide harmonisation of social policy, but rather the development of common social policy principles for effective and reliable welfare provisions systems in Europe¹⁹. The necessary consideration of different traditions and systems in the social policies of individual Member States can be achieved by ensuring the competencies of the Member States²⁰. Only once this framework has been established can the necessary and desirable public professional exchange of principles, goals and instruments in the system take place, leading to the upward social convergence aimed for as well as improvements in real social conditions for people.

Notes on individual political domains

In view of the above, the German Association, backed by its longstanding practical experience in Germany, would like to offer remarks to the European Commission and Member States on the individual political domains outlined by the European Commission in its “First preliminary outline”:

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

19 See Fn. 2.

20 See Fn. 2.

Retirement and pensions: A sustainable pension system contributes to poverty prevention. On an individual level, it is primarily the assurance of a retirement income which facilitates a decent standard of living for the elderly²¹. In the view of the German Association, statutory pension insurance is the most important pillar in securing adequate retirement income in Germany. It is supplemented by the options of company and private pensions²². The German Association takes a critical view of the Commission's proposal to index the statutory pension age to developments in life expectancy by means of an automatic process.

Subsistence protection/minimum income: The German Association reiterates that the Europe 2020 objective to reduce poverty should be pursued in a reinforced manner. Measures for subsistence protection/minimum income are making 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 upon a preservation of the dignity of each and every human being and upon the basic concept of solidarity. All action has to aim 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) poverty²³. The German Association affirms the observation of the European Economic and Social Committee (EESC) that "collective financing and legal safeguards [for subsistence protection/minimum income] sometimes need improving"²⁴. Subsistence protection/minimum incomes can and should make a significant contribution in enabling participation²⁵.

People with disabilities: 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 the implementation of the UN CRPD contains major challenges for the signatory states, welfare provision systems must be geared toward persons with disabilities and adapted in a way that ensures inclusion²⁶.

Long-term care: In the course of demographic change across Europe, the number of people who need assistance and care in daily life increases. 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.

21 Deutscher Verein's Opinion on the European Commission's White Paper "An Agenda for Adequate, Safe and Sustainable Pensions".

22 See Fn. 2.

23 "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"; "Opinion of the German Association on the European platform against poverty and social exclusion".

24 See Fn. 3.

25 See Fn. 2.

26 See Fn. 2.

Moreover, the prevention or reduction of long-term care is of great importance²⁷.

In the view of the German Association, the coordination of cross-border care provision should be regulated by the EU as soon as possible.

Childcare: Measures to improve the work-life balance have positive impacts for family members and their well-being, but also increase the employment rates, especially among women. Here, the German association is in favour of reconciliation and a work-life balance throughout a person's lifetime. Since work-life balance refers not only to the phase of raising children, but also to the phase of caring for older/dependent relatives. The German Association therefore calls for a significant relief²⁸ for the reconciliation of work and care. The expansion of childcare facilities is essential for reconciling work and care. The German Association recommends high-quality day care for children, as well as high-quality education and day care for school-age children²⁹.

27 "Adapt the care system to social structures! Recommendations of the German Association on the further development of care".

28 "Opinion of the German Association on the reference 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 the compatibility between family, care and employment ('better reconciliation of family, care and work')".

29 "Recommendations of the German Association on public education and care for school age children from their first year in school to the end of their 14th year of age".



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