



## **Socio-political expectations of the European Union – opinion of German Association for Public and Private Welfare<sup>1</sup>**

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### **I. Introduction**

In May 2014, elections to the European Parliament will be held and a new European Commission determined the following autumn. In German Association's opinion, the

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European Union (EU) is going to lose people's confidence and acceptance - and not only in the run-up to the election – if its policy is not going to contribute more to social progress and an improvement in its citizens' situation than it has done in the past. It is against this backdrop that German Association uses this opportunity to demand more social rights in the EU, to submit proposals for a further development of the coordination of the various social policies and to come up with socio-political priorities for the EU.

It expressly asks for:

- a socially responsible policy for the further development of the European Union, through social investments and a determined fight against youth unemployment in particular;
- a strengthening of the EU's social objectives and rights, e.g. through a more effective social impact assessment and by acceding to the Council of Europe's Social Charter;
- a better accessibility to the tools of political coordination in order to be able to co-shape policies within the Member States and better to involve the national parliaments and the European Parliament and
- a better consideration of the social consequences of mobility within the European Union and of the reforms of the legal framework of the Single Market's social services of general interest.

This opinion is addressed to the European Commission, the European Parliament and the government of the Federal Republic of Germany in relation to its actions within the Council of the European Union.

### **The current social situation in Europe**

In the fifth year of the crisis, there is still an increasing economic and social divergence between the EU Member States. According to official statistics, the unemployment rate in the European Union in 2013 again reached 11 per cent. A better employment rate in some countries like Germany, Great Britain and Romania could not offset the declining rate in, for example, Greece, Spain or Portugal. Particularly affected by unemployment is the age group of people under 25 years, whose EU unemployment rate is 24.2 per cent on average. Again, there are huge differences between the various EU Member States: while only Germany and Austria show rates below 10 per cent, those in Portugal and Italy are just below 40 per cent and in Spain and Greece even above 55 per cent, and at an increasing rate at that.<sup>2</sup> In some countries the austerity policy, for which the European Union shares

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<sup>2</sup> Cf. European Commission: EU Employment and Social Situation. Annual Overview 2013, 42 f., 88.

responsibility, has led to much social upheaval and loud protests by the population. Particularly some countries' high youth unemployment rate is causing concern. Among its citizens and among young people in particular, the European Union's image has suffered on a permanent basis.

This is contrasted by the fact that after considerable efforts to fight the crisis in the banking sector most EU Member States' budgets are running a deficit. And among private households the number of those in financial difficulties has also risen much above pre-crisis levels: about one quarter of the households in the bottom income quartile state that in order to finance running expenses they have to use (some of) their savings or become indebted. This pattern is on the increase among all income groups. And again, there is a divergence between the Member States: among about half of the Member States, in southern Europe and on the periphery in particular, the situation worsened once again last year.<sup>3</sup> All the EU's efforts notwithstanding, since the beginning of the crisis the poverty risk rate (share of people with less than 60 per cent of the median income) has risen in two thirds of the Member States. In 2013, the European average was more than 24 per cent.<sup>4</sup>

In German Association's assessment, the imbalance between the economic and socio-political organisation of the European Union has contributed to the on-going crisis. Although the foundation stone for the political imbalance was quite possibly laid long before the crisis, the afore-mentioned divergence, the increasing unemployment rate and the poverty risk have been reinforced as a result of the crisis and an insufficient crisis management. The European Union is a common economic and social area in which one Member State's economic and social problems have an immediate impact upon the other Member States. A high-rate convergence of the European welfare states would not only increase the European Union's competitiveness but also its internal cohesion and its acceptance among the population.

In German Association's assessment, a contractionary fiscal policy has made the tight situation in some countries' labour markets even worse by direct public-sector cuts (e. g. in employment programmes) and an aggregate demand. Budgetary consolidation led to many a cut in social expenditure. While the social protection systems in the first two years of the crisis had indeed been able to show their automatic stabilisation effects, according to the EU Commission these effects were completely gone by 2012. The European Commission rightly underscores that especially those European countries with the most efficient social

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<sup>3</sup> Cf. European Commission: EU Employment and Social Situation. Quarterly Review, March 2013, 26 f.

<sup>4</sup> Cf. European Commission: EU Employment and Social Situation. Annual Overview 2013, 5.

systems and most developed social partnerships are among the most successful economies worldwide.<sup>5</sup> In view of an increasing poverty rate, social exclusion and unemployment, a departure from a one-sided austerity policy and a new policy of social investments, a higher employment rate, an effective fight against youth unemployment and poverty within the European Union is urgently required.<sup>6</sup> Expenditures in these areas should not only be deemed a fiscal burden but also essential investments. Especially in times of an economic downturn, they are indispensable and will contribute to an accelerated increase in the employment rate in times of an upswing. The European Commission also points out that the austerity measures in some Member States show a distribution effect that is adverse to the lower social strata.<sup>7</sup>

In our view, the situation demands that the following steps be taken:

- German Association asks the European Commission and the European Council to meet their social responsibility also when managing the crisis and to take account of the social impact their political measures will have. The EU's policies must not stand in the way of the Member States' socio-political policies.
- German Association asks the European Commission speedily to start the social investment policy it has proposed, have a comprehensive view of social policy and pursue the Europe 2020 strategy's goals in a consistent fashion.<sup>8</sup> It asks for joint efforts by the European Commission and the Council to attain the goal of social cohesion and solidarity between the Member States.
- German Association asks the European Commission to come up with proposals on how the stabilising function of the national social protection systems can be strengthened by a joint policy and to say where this is not yet possible because of the limits imposed by the pertinent Treaties.
- German Association asks the European Commission in its interactions with the government of the Federal Republic of Germany to focus upon a social inclusion of the disadvantaged target groups and their employability, upon which basis labour-market activities have to be initiated that help to fight structural poverty.

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<sup>5</sup> Communication from the European Commission "Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014–2020", COM(2013) 83, 2.

<sup>6</sup> Stellungnahme des Deutschen Vereins "Sozialinvestitionen für Wachstum und sozialen Zusammenhalt", NDV 2013, 298 f. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/))

<sup>7</sup> Cf. European Commission: EU Employment and Social Situation. Quarterly Review, March 2013, 42 f.

<sup>8</sup> Stellungnahme des Deutschen Vereins "Sozialinvestitionen für Wachstum und sozialen Zusammenhalt", NDV 2013, 298 f. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/))

- The European Commission should regularly document the progress made in fighting youth unemployment. This progress should be better highlighted and analysed in the *EU Employment and Social Situation Quarterly Reviews*. All the Member States have to submit appropriate indicators related to the fight against youth unemployment, even if they, like Germany, do not show youth unemployment rates of 25 per cent and thus cannot benefit from the pertinent European Union funds. In this context, German Association also asks for a fast implementation of the Commission's proposals on youth guarantees and a regular reporting on the progress that has been made. The approx. EUR 6 bn until 2020 budgeted for employment initiatives benefiting young people are totally insufficient and have to be increased.

## II. Further development of the legal basis

### Social progress with the Treaty of Lisbon

The Treaty of Lisbon came into effect at the end of 2009. It is supposed to make the European Union with its now 28 Member States more democratic, transparent and efficient and also includes new provisions for a European policy on employment, social affairs and social services. The European Union sees itself as a community of common values: the joint actions are based upon values like freedom, justice, solidarity and social objectives. It fights social exclusion and discrimination, promotes social justice and social protection, equal rights of women and men, inter-generational solidarity and a protection of the rights of children. The European Union promotes social and territorial cohesion and solidarity between the Member States. The Single Market is to contribute to full employment and social progress in form of a social market economy.<sup>9</sup> By the horizontal social clause<sup>10</sup>, the European Union, in all political fields, is committed to a better consideration of social aspects like education, health, employment and social protection. This also applies to initiatives pertaining to the Single Market and environmental or industrial policy initiatives. The social impact assessment tool commits the European Commission to assess a new legislative measure's social impact even before it is introduced. The Treaty of Lisbon also bindingly sets forth the applicability of the Charter of Fundamental Rights in the EU. This Charter provides for non-discrimination, rights of the elderly, an integration of disabled people and rights to social security and access to services of general interest.

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<sup>9</sup> Cf. Art. 3 TEU.

<sup>10</sup> Art. 9 TFEU.

The European Union and its Member States' actions will be measured against the social objectives set forth in the Treaty of Lisbon, as will the European Court of Justice (ECJ) and national courts' jurisprudence. For instance, the protection rights set forth in the Charter of Fundamental Rights can now be asserted before the ECJ. In formal terms, they are equal to the Single Market's fundamental freedoms. However, German Association is doubtful that they will actually be allowed the same applicability as the fundamental freedoms. Their effectiveness will, at minimum, be based upon a certain visibility.

The introduction of a new Social progress clause would also promote a more effective application of social rights at the European level. In German Association's view, such a clause is to balance social and Single Market integration. Fundamental freedoms and rules of competition should not take precedence over fundamental social rights and social progress. In case of the above contradicting each other, fundamental social rights should take precedence. The economic freedoms set forth in the Treaties have to be construed in such a fashion that they will not impair the exercise of the fundamental social rights.

The already existing social impact assessment tool can also be used to raise the awareness of the potential existence of an inadvertent negative social impact in lawgiving procedures and may influence decisions. Here, the European Commission, the Council's departmental ministers and the MEPs are all asked to use that method in a serious and visible manner.

In German Association's view, the objective should be to commit the European Union to social rights in a more pronounced fashion, e. g. through its accession to pertinent international agreements. The European Social Charter is a treaty under international law that is part of the Council of Europe's body of law. Since 1999, a total of 25 European countries have put the revised version into effect. More than one third of all European Union Member States, including Germany, have not yet ratified the Charter, its Additional Protocol and System of Collective Complaints. Art. 6 Subsection 2 TEU sets forth that the European Union accedes to the European Convention on Human Rights. Analogously, the European Union should also commit itself to the European Social Charter and become one of its major supporters. What is decisive here is that the rights are protected effectively, i.e. the European Union must support efforts to add another court to the European courts that deals with Social Charter-related matters. There simply has to be a court that is not, like the ECJ,

primarily dealing with Single Market law, but sees to it that social rights play a central role in Europe.

The same applies to the new control mechanisms within the framework of the Fiscal Compact. The crisis has shown that the objectives of full employment and social progress compete with objectives like economic growth and budgetary consolidation. That the social objectives can lead to new tools and measures is shown by the Europe 2020 strategy, which is not only to lead to more growth and employment but also to fight poverty and social exclusion. If its values and objectives can actually be realised and attained will much depend upon political will.

#### Our demands are:

- German Association asks for a Social progress clause to be included in the European Treaties that determines that no provision of the Treaties and especially no rule of competition will take precedence over the fundamental social rights and social progress. In case of contradictions between the above, fundamental social rights have to take precedence.
- German Association asks the European Commission to assess all initiatives' social impact and make such results easily accessible. The European Parliament and the Council are asked to refer to this social impact assessment in their consultations and also employ such when introducing amendments. The social impact assessment has explicitly to consider the impact upon the target groups and groups requiring special protection.
- German Association asks for the EU's accession to the European Social Charter. It also asks the government of the Federal Republic of Germany to advocate such accession in the European Council.

#### **Local authorities' role**

The EU citizens' life is essentially shaped by their local situation. It therefore does not suffice only to look at the national governments and legislation when dealing with European integration. Especially in the field of services of general interest, it is the municipalities that provide the essential ones.

In German Association's assessment, the European Union will only be able to reach out to its citizens if it views and involves the municipalities as a democratic and citizen-friendly

level. The local authorities and the subsidiarity principle must not be neglected in the European integration process but considered as a major factor in this integration.

EU-internal migration levels may well increase and in some parts of Europe so will people's expectations of their local authorities. EU-internal migration is not only fed by potential labour market access but also by poverty and the hope of better participation in societal life. Some municipalities are much impacted by such poverty-induced migration, and these municipalities are entitled to all European institutions' support.

German Association thus wants to see the following actions:

- German Association asks the European Commission and the government of the Federal Republic of Germany to consider that municipalities can be affected in very different ways by EU policies and their national implementation. It also asks the Federal Government to represent the municipalities in an effective manner vis-à-vis European institutions and to support their institutional involvement, in the Committee of the Regions in particular.
- German Association refers to the fact that the municipalities in Germany have to be funded commensurately if and when they get new responsibilities, also if these should be based upon European initiatives. After all, some of the social balancing process, also in the context of an implementation of European policies, takes place at the municipal level.

### **III. European social policy's coordination and co-shaping**

#### **The European Semester's social dimension**

In the summer of 2010, the European Union passed its Europe 2020 strategy<sup>11</sup>, aiming at smart, sustainable and inclusive growth. Three of the five core objectives have a very social dimension: by 2020, the number of people affected by poverty and social exclusion is to be lowered by no fewer than 20 mn, the rate of people in employment is to be raised by 75 per cent and the educational level is to be raised as well. In order to attain these core objectives in the European Union and the Member States, a reporting mechanism has been established that coordinates European Union documents and national contributions on an annual basis. This is the so-called European Semester.

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<sup>11</sup> Cf. Communication from the European Commission "Europe 2020 - A strategy for smart, sustainable and inclusive growth", COM(2010) 2020.

German Association welcomes the Europe 2020 strategy's objective of an inclusive growth, promoting a high-employment economy and a high rate of economic, social and territorial cohesion<sup>12</sup>. The core objectives of social inclusion, employment and education lend the Europe 2020 strategy the necessary social dimension. This can contribute to a more social orientation in all European policy fields and promotes the realisation and attainment of the social values and objectives of the EU. This necessitates the European Commission and Member States' consideration and committed pursuit of the social core objectives and corresponding flagship initiatives as decisive elements of the Europe 2020 strategy. Only with a differentiated and inclusive understanding of growth will social cohesion and solidarity become sustainable and will affluence, social peace and Europe's global competitiveness be guaranteed.<sup>13</sup> The strategy's half-way point in 2015 calls for a survey of the progress made in the attainment of those social core objectives that may not necessarily stand out in the annual cycle.

In German Association's view, an early and extensive involvement of the *Länder*, municipalities and civil society actors in the analysis and development of the Europe 2020 strategy and the implementation of the announced measures is indeed necessary. In a federal and pluralistic country like Germany that places a high value upon the subsidiarity principle being applied to the discharge of responsibilities and the rendering of social services complex strategies like the National Reform Programme can only be pursued when acting together.<sup>14</sup>

For the European Semester, German Association asks for:

- German Association asks the European Commission to focus more upon the social core objectives in consideration of the subsidiarity principle in its Annual Growth Survey and when drawing up country-specific recommendations. The Member States are to be committed to include in their National Reform Programmes details on social investments, active-inclusion strategies (minimum incomes, inclusive labour markets

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<sup>12</sup> Communication from the European Commission "Europe 2020 - A strategy for smart, sustainable and inclusive growth", COM(2010) 2020, 3.

<sup>13</sup> Empfehlungen des Deutschen Vereins zur sozialen Ausgestaltung der so genannten Post-Lissabon-Strategie ab 2011, (in German only), p. 21, published at: [http://www.deutscher-verein.de/05-empfehlungen/empfehlungen\\_archiv/2009/pdf/DV%2016-09.pdf](http://www.deutscher-verein.de/05-empfehlungen/empfehlungen_archiv/2009/pdf/DV%2016-09.pdf)

<sup>14</sup> Stellungnahme des Deutschen Vereins "Sozialinvestitionen für Wachstum und sozialen Zusammenhalt", NDV 2013, 298 f. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/))

and access to high-quality services) and integrated strategies on how to improve children's opportunities.<sup>15</sup>

- German Association asks the EU Commission in 2015 to come up with a mid-term evaluation of the Europe 2020 strategy that analyses the European Semester's processes, the nationally set targets and also their indicators in relation to the social core objectives and adapts them, if need be.
- German Association asks for an appropriate involvement of national, regional and local participants and civil society actors when preparing and implementing National Reform Programmes.<sup>16</sup>
- German Association again asks the European Commission to present the Guideline on a better involvement of stakeholders that had already been announced in 2010<sup>17</sup>.

### **Further development of the Open Method of Coordination**

Since 2000, the Open Method of Coordination (OMC) has been used for the further development and convergence of the political objectives in Europe. The Member States here have a forum that allows them to learn from each other by exchanging good practices, practical experiences and political approaches and receiving the Member States and European Commission's reports. The social protection and social inclusion OMC (Social OMC) is used for social inclusion, pensions policies, LTC and healthcare policies, i.e. for areas for which the Member States or their territorial units are responsible.

The Europe 2020 strategy's control mechanisms for the social core objectives are now added to the Social OMC's exchange mechanism and reporting system. In practical terms, this means that the Member States not only present the European Semester's National Reform Programmes but also so-called National Social Reports, which replace the OMC's National Strategy Reports from earlier times.

According to German Association's findings, over the past few years the Social OMC has underscored the necessity of combating poverty in the EU Member States and improved

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<sup>15</sup> Stellungnahme des Deutschen Vereins "Sozialinvestitionen für Wachstum und sozialen Zusammenhalt", NDV 2013, 298 f. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/))

<sup>16</sup> Stellungnahme des Deutschen Vereins zur Europäischen Plattform gegen Armut und soziale Ausgrenzung, NDV 2011, 152 ff. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf))

<sup>17</sup> Stellungnahme des Deutschen Vereins zu "Sozialinvestitionen für Wachstum und sozialen Zusammenhalt", NDV 2013, 298 f. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/dokumente/))

the data and the good-practice exchange among Member States. In German Association's view, this result is a good reason to continue the method. The European Commission, however, has not yet submitted any proposal on how to intensify the OMC. Instead, it points to a better coordination of the national policies through the European Semester. A replacement of the Social OMC by considering its objectives within the framework of the Europe 2020 strategy's social core objectives means less transparency and less co-shaping by experts from the Member States and science.<sup>18</sup> What is necessary instead over the next few years, however, is a realisation of the principle of voluntary learning, applying the good practice of involving many stakeholders and being flexible enough to deal with different and changing (along with the social situation) interests and activities of the Member States in order to ensure the OMC's added value.<sup>19</sup> Over the next few years, the OMC has to deal with the fight against poverty and social exclusion, child and old age poverty in particular, families' special situations, single parents' in particular, a better conciliation of family and working life, health and LTC plus the demographic change.

In order better to legitimise the EU, organised civil society actors must be included in the OMC. This objective would also be helped if the European Parliament and national parliaments were to get more involved in the processes. This may well entail a better image of the European Union and its institutions among its citizens.

Citizens only have rather limited opportunities to get involved in the Social OMC and the Europe 2020 strategy as well. For the design and implementation of the European Structural Funds, the partnership principle<sup>20</sup> has been made binding in form of a code of conduct for the partnership of NGOs and social partners with public, governmental institutions. German Association thus proposes to apply this principle also to the coordination within the framework of the OMC and the European Semester in order to attain a more sustainable social effect.

For a better coordination of the European social policy, the following is of particular importance:

- The relationship between OMC and European Semester has to be clearly defined. The OMC monitoring tools have to be applied effectively in order to attain the National

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<sup>18</sup> Stellungnahme des Deutschen Vereins zum Weißbuch der Europäischen Kommission "Eine Agenda für angemessene, sichere und nachhaltige Pensionen und Renten" (in German only), NDV 2012, 465 ff.

<sup>19</sup> Stellungnahme des Deutschen Vereins zur Europäischen Plattform gegen Armut und soziale Ausgrenzung, NDV 2011, 152 ff. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf))

<sup>20</sup> Cf. The European Commission's Code of Conduct on Partnership, 2012.

Reform Programme's and Europe 2020 strategy's social objectives. However, a strengthening of the OMC must not exempt the Member States from their obligation to detail their progress on the way to attain the poverty goals in their National Reform Programme and to develop and submit anti-poverty strategies.

- German Association wants the OMC to be used more effectively. At the same time, the social objectives of the Europe 2020 strategy must not be removed to the less binding National Social Reports.
- German Association asks for a stronger involvement of governmental and civil society actors at the national, regional and local level in the preparation and implementation of the Social OMC.<sup>21</sup> Especially the role of the European Parliament and the national parliaments has to be strengthened.
- German Association wants the *Code of Conduct on Partnership* applied to the aforementioned participation tools and expanded for more participation by citizens. This will let organised societal actors participate and involve the respective target groups.

#### **IV. Socio-political priorities for the coming parliamentary term**

##### **Mobility and social security in Europe**

European integration's objective is the creation of a Single market also for workers and free movement by all EU citizens without discrimination based upon their nationality. The transnational mobility is socially protected by the European regulations on the coordination of social security law, which set forth protection in case of illness and maternity, invalidity, industrial accidents and occupational diseases, old age, need of care, death and entitlements to child benefit and family benefits.

The last expansions have made the European Union more heterogeneous in both economic and social terms. The divergence in affluence and the partly very divergent living conditions may occasion EU citizens to move to other EU Member States in order to improve their situation. Immigration from south-eastern Europe<sup>22</sup> is currently being hotly debated, both in the political domain and in the media. But the economic and financial crisis

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<sup>21</sup> Stellungnahme des Deutschen Vereins zur Europäischen Plattform gegen Armut und soziale Ausgrenzung, NDV 2011, 152 ff. (in English available at [http://www.deutscher-verein.de/01-wir\\_ueber\\_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf](http://www.deutscher-verein.de/01-wir_ueber_uns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2003%2011%20Opinion%20on%20European%20Platform%20against%20Poverty.pdf))

<sup>22</sup> Cf. Diskussionspapier des Deutschen Vereins zur Zuwanderung von Unionsbürger/innen aus Südosteuropa (in German only), NDV 2013, 439 ff.

and the afore-mentioned disparate employment opportunities also make for transnational employment-related migration.

In German Association's assessment, the coordination of the social security systems is a meaningful addition to the national social policies, logically located at the European level. Any reform here should in future not only seek a better coordination of the LTC risk, but also an adaptation of the services for job seekers in other EU countries to the requirements of the European right of free movement. Such coordination rules have to be simplified and follow the monetary and in-kind benefit export principle. A limitation of the receipt of benefits to three to six months is thus inappropriate<sup>23</sup>.

A reduction of the free movement debate to poverty migration ignores the fact that the huge majority of mobile European Union citizens is well trained and motivated to work. The causes of poverty migration have to be fought in a committed fashion: the countries of origin require measures to improve the situation of the very poor and socially excluded parts of the population. Using funds from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) and, perhaps, the proposed Fund for European aid to the most deprived (FEAD) for these people may help to improve their situation. For transnational vocational training arrangements, fair training conditions and a win-win situation for either side has to be seen to. Equally, a brain drain has to be avoided.

Germany does also have to see more financial expenditures if it wants to cope with the immigration impact. ESF funds can be used to improve the economic and social situation of EU citizens from south-eastern Europe.

The labour markets in the EU Member States most heavily affected by the crisis have to be stabilised. Targeted measures to ensure employability, e. g. an effective implementation of the new European Union youth guarantees, are required.

German Association thinks the following steps should come first:

- German Association asks the European Commission to adapt the regulations on the coordination of social security systems to the requirements inherent in the right of free movement by making insurance benefits for job seekers exportable to other EU

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<sup>23</sup> Cf. , e.g.: Rechtlicher Rahmen zur Erwerbsintegration von Menschen ohne deutschen Pass – eine Handreichung des Deutschen Vereins (in German only), NDV 2013, 207 ff.

countries for more than three to six months. The Federal Government is to support this objective in the Council.

- German Association asks the European Commission to analyse transnational training arrangements and publish good practices.
- German Association asks the European Commission to advocate decent working conditions, for posted workers in particular. The European Union Posting of Workers Directive's enforcement directive now has to be passed by the European Parliament.
- German Association asks the European Commission to attach more importance to minorities' social situation when negotiating accession with potential EU Member States. Membership in the European Union should be predicated upon a major improvement in these people's situation, their societal participation and much less discrimination as well.
- German Association asks the Federal Government (and the *Länder*) to support municipalities and independent institutions in their application for ESF funds to be able to better assist immigrated EU citizens in precarious situations.

### **Cohesion policy**

In the implementation of the objectives of the Europe 2020 strategy, the European Structural and Investment Funds (ESI Funds) play an important role. The planned funding is systematically and closely associated with the Europe 2020 strategy's priorities and flagship initiatives. This means the European structural and investment policies are fully geared to the Europe 2020 objectives.

The ESI Funds aside, the European Commission has proposed a Fund for European aid to the most deprived (FEAD) to support them primarily with food and in-kind. Based upon the Council and other actors' reservations, social inclusion has been added now in order to push anti-poverty measures on a Europe-wide basis. This fund is supposed to amount to EUR 2.5 bn, approx. 130 mn thereof for Germany. The federal Government had rejected the original version and required a change in the programme. Since there is now another focus, it is indeed being examined in Germany if the fund is to be implemented.

German Association welcomes the interlocking of the socio-political objectives of the Europe 2020 strategy with the EU cohesion policy and is able to derive three national implementation strategies: focusing the funds, coordination between the two levels (federal

– *Länder*) in order to avoid double funding and a better gearing of the results and effects of the individual components to the Europe 2020 strategy's objectives.

German Association supports the objective of social inclusion in the European aid fund. This will now also allow Member States like Germany to participate in the fund with their own Operational programmes. This may benefit not-too-employable people, parents and their children who are suffering from various exclusion characteristics, individual problems and social disadvantages and have previously hardly got anything from the Structural Funds.

For the European Union cohesion policy, German Association sees the following priorities:

- German Association asks the European Commission to pay attention to the Member States' operational programmes' interlocking of the Europe 2020 strategy with the cohesion policy. Given the Structural Funds' partly rather complex implementation processes, the EU Commission should approve administrative simplifications and, if need be, organise support for an implementation in the Member States (e. g. through advice to the approving authorities and the civil society and welfare organisations applying for funds).
- German Association asks the Federal Government in the pertinent current negotiations to advocate an independent focus of social inclusion to be incorporated in the European aid fund that over the next few years would allow Germany to take strategic anti-poverty measures benefiting very disadvantaged target groups like, for example, the homeless and members of minorities, immigrants in precarious situations in particular, through its own Operational programme.

### **Single Market and Services of General Interest**

As we have outlined above, during the crisis, the EU-wide demand for social services has seen a large increase, while in many a Member State the pertinent funds have been cut due to austerity pressure. This has an impact upon social services' availability. In some countries, not only young job seekers and the elderly but also migrants and people with disabilities are particularly affected, sometimes leading to a hugely impaired quality of life. In its Social investment package, the EU Commission points out that Member States with a

sustainable structure of social services were less hit by the crisis and better able to cope with it than others.<sup>24</sup>

Of special significance for the provision and organisation of social services are the European rules and guidelines on public procurement and state aid and the coordination of the Member States' VAT systems.

Children and youth welfare, inclusion assistance, work with the elderly etc. primarily serve an adequate individual and subsistence support plus a preservation of these individuals' dignity. These objectives are the foundation of the establishment and preservation of the social security systems and must remain at the forefront. In German Association's view, the role of social services is therefore not solely defined by cost efficiency. Against this backdrop and because of social services' inclusive orientation, their important role in the attainment of the Europe 2020 strategy's objectives should be highlighted here.

Regarding the European public procurement law, from 2014 we will see the implementation of the reformed regulations into national law. German Association welcomes the fact that in the course of the reform of the European Union's public procurement law and the regulation of the service concessions models like the so-called triangular relationship between provider, user and public authority (as a cost-bearing unit), licensing models or personal budgets have been recognised as conforming with European law and as alternative procedures. They give users more choice and also increase the competition between providers for good quality and a user-orientated development of their products and services.

The admissibility of procedures to organise social services next to public calls for tender also has to be transferred to European Union state aid law. In Germany, the rendering and funding of social services, e. g. inclusion, assistance for the disabled, services for the elderly, is primarily organised in triangular relationship mentioned above. In European jurisprudence (ECJ's *Altmark Trans* ruling), a criterion has been created that provides for the admissibility of state aid to social services of General Interest if there has been a call for tenders. But in the domain of the provision within the triangular relationship there are no conventional procurement procedures. If the this triangle of agreements were here to be recognised as an alternative, the state aid no longer would constitute an aid within the meaning of Art. 107 Subsection 1 TFEU. Otherwise, it would be subject to the general state

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<sup>24</sup> Communication from the European Commission "Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014–2020", COM(2013), 83.

aid prohibition, which would contradict the admissibility of the triangular relationship/licensing models in the European public procurement law.

German Association also welcomes the reform of the state aid regulations regarding social and economic services of General Interest (*Almunia package*). But some matters are left unsettled, e. g. when social services are Single-Market-relevant and thus subject to state aid law that are frequently (solely) rendered locally for the local population and require the service provider's knowledge of the local context. Particularly SMEs are still unable to cope with all the red tape an exemption requires, e. g. documentation and verification obligations. It has also been shown that the ceiling for the de-minimis regulation for services of General Economic Interest of currently EUR 500,000 is too small an amount if you want to discharge responsibilities of general interest. An increase to EUR 1 mn would help.

Over the past few years, the EU Commission has taken a number of initiatives to reform the VAT system. It is considering, for example, putting under scrutiny all exemptions and reduced VAT rates, including those in the public or public's interest. This would have an impact upon social services, since the public sector and social service providers would see huge additional expenditures which would not be offset by any better access to social services or their higher quality. And abolishing reduced VAT rates for the products and services of General Interest would also considerably burden low income groups.

For a development of the legal framework pertaining to social services, the following steps are of utmost importance:

- German Association demands that teeth be put into the social services law with regard to an attainment of the social objectives set forth in the Europe 2020 strategy. The quality of services should be considered when a contract is awarded in the course of the procurement process. German Association asks the European Commission to ensure continuity, accessibility, affordability and a high-quality rendering of social services pursuant to Art. 34 and 36 of the Charter of Fundamental Rights and the TFEU's Protocol No 26 on a EU-wide basis and not to take measures that would undermine these objectives.
- The organisation of social services by way of the so-called triangular relationship or licensing models has to be recognised as conforming to Single Market and competition rules in both the European public procurement and state aid law.

- German Association asks for an increase of the ceiling for the SGEI de-minimis regulation from currently EUR 500,000 to EUR 1 mn.
- German Association asks the European Commission and the Federal Government to recognise the special role social services play and to preserve their reduced VAT rate.

**Deutscher Verein für öffentliche und private Fürsorge e.V. is the central social work and social policy forum of and for the German municipalities and voluntary welfare agencies, its branches in the *Länder* and scientists. Its expertise and experience help to shape and support children, youth and family policies, welfare and geriatric care, social services, LTC and rehabilitation.**

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