

Bundesarbeitsgemeinschaft



der Freien
Wohlfahrtspflege

Memorandum

The Civic Added Value of Voluntary Social Services

Brussels, October 2004

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Introduction

In its White Paper on services of general interest [COM(2004) 374 final] the EU Commission announced its intention to submit a Communication in 2005 on social and health services of general interest. The communication shall deal with the way social services in the Member States are organised, how they function and in what manner they contribute to social and territorial cohesion, to the maintaining of European fundamental rights and to the securing of an adequate level of social protection. This memorandum makes a contribution towards this communication.

The memorandum is not designed to merely list the social services as offered by the charitable associations in Germany, but is intended to make a contribution to the developing European profile of social services. The aim is not to transplant the German model into European ideas, but rather – based on the situation in Germany – to show some building stones that can be of European significance (see Maastricht Declaration on Co-operation with Charitable Associations – Appendix 2).

This is also expressed in the title of this memorandum “The civic added value of voluntary social services”. The German charitable associations are “civic actors”. Their specific task is to convince the forces of civil society to become involved in the associations and thus to offer services characterised by a special quality and which truly correspond to the needs of people facing social problems. This corresponds to the principle newly introduced to the EU via the Treaty establishing a Constitution for Europe, which is the principle of “participatory democracy”, where all citizens are called upon to have their share in defining policy. This must not be allowed to remain an abstract nondescript principle, but must become visible for the citizens of Europe, by showing that it applies effectively to the social services directly at the local level.

This memorandum describes the societal and legal context surrounding social services offered within the social protection system, via an interaction of public, voluntary and commercial providers. With regard to the EU we shall describe the activities of voluntary charitable associations in particular in the light of the following criteria:

- The non-profit character of their activities characterised by their own objectives and implementation thereof;
- The special legal mandate given to them as civic actors;
- Their mission within civil society, in particular by working with volunteers;
- Their quality management system used to maintain adequate quality standards.

I. The common good and individual responsibility

What are the characteristic aspects of social services as offered by charitable associations? Where do they differ from public (national or local) and commercial services? What are the typical aspects in their concepts and contents? Do they serve the interests and needs of people, clients and customers? Do the latter participate in defining those services? How do these characteristic aspects influence the day-to-day delivery of the services? To what extent is there a networking with other offers of assistance? Is the service integrated into a community or an associative support network?

A description of the civic added value and the characteristics of the social services offered by the charitable associations entail a comparison with other services by other providers and an evaluation thereof. A decisive difference is the fact that their individual service is not only characterised by professionalism, but also very much by the different values upheld by the providers and their associations.

Social assistance does not start with professional social services. There is an “ante-room” of such assistance where family and neighbourhood as well as privately organised networks lend support, based on individual motivation and values as they are typical for a pluralistic society. This visible person-related approach of any such assistance is continued in the social services. They are individual, person-related types of assistance designed to help people to help themselves.

This presupposes a mutual personal relationship between the person in need and the giver of assistance. The helpers must be able to develop sensitiveness and competence to carefully find out the individual desires and state of minds of each person. It requires that each helper receive the needed individual flexibility, which is his/her own responsibility to apply. Only this way is it possible to achieve the objective to satisfy in a particular way the individual needs of the people concerned. With this, social services face special challenges. In principle, any social service operates on the basis of such an understanding of social assistance. Each social service - independently by which public, non-profit or commercial provider it may be offered – has to satisfy these pre-requisites as well as the technical and qualitative requirements for a service of a professional orientation.

Social services of charitable associations differ from other providers of social services in particular by the values upheld by the responsible bodies and their associations. They are characterised by a broad range of different humanitarian, philosophical and religious objectives. This range, which ties in with the various motivations and value-orientations upheld by the people active in the “ante-room” of assistance, is reflected in the respective principles and support concepts of the associations and their establishments as well as in the individual form of assistance.

The value orientation of charitable associations and their services and establishments is the core of the civic added-value of voluntary social services. It reflects a constitutional practice in which the State gives broad range to the activities of social groups with humanitarian, philosophical and religious orientations, and thus to a social practice guided by a variety of motivations. The charitable associations and their establishments have a higher responsibility and more opportunities than public or commercial providers to offer support truly geared towards the individual as it is already happens in the “ante-room” of social services. However, the guiding values of the provider must not dominate the support process unilaterally. Of equal importance are the values to which the person seeking help feels bound and what type of assistance he is therefore seeking.

The social services offered by voluntary providers are grounded in reliability, continuity and long-term responsibility; they are characterized by empathy with the needy and their difficult living conditions. In doing so they achieve a credibility, which is not the least reflected in the number of requests for these services.

This is the core of an understanding according to which voluntary social services show characteristics beyond criteria of mere economic viability, and which contribute to a certain social culture. By their special mission, which helps shape social aspects, voluntary social services also make a contribution to a community that guarantees social well-being also by giving citizens an opportunity to recognise and assume their own responsibility for such common good.

This is the background for understanding and assessing all following characteristics of social services offered by charitable associations. Their defining points are:

- **Great number and diversity**

The interaction of public, voluntary and commercial providers allows to offer a sufficient number of services. The diversity of services by voluntary providers is characterised by various humanitarian, philosophical and religious values. This broad spectrum provides a broad access to services that correspond to the diverse needs of those citizens who require them.

- **Mobilising civil society**

The social services offered by the charitable associations take into account the entire social sphere surrounding the ill, the elderly people with a disability or, who face other limitations. For this purpose they try to generate voluntary and civic involvement as important elements of communal life in a socially minded society. They use this involvement to appeal to society and the State in favour of a community characterised by a social culture.

- **Creating social links and networking**

The principles of subsidiarity and solidarity are visible being put into practice in a variety of ways in self-help groups, schemes for neighbourhood assistance, lay assistance, volunteering and civic involvement. This strengthens the motivation behind social action and enhances the quality of social services.

- **Participation**

The participation of the people seeking help is characterised by two elements:

- Social services that the people provide themselves by their own means, and
- By involvement in defining the services.

The opportunities for participation depend on the respective services offered, where there has to be flexible in order to adapt them to the needs. A service geared towards the community must fulfil other pre-requisites than a service provided in an establishment for inpatients coming from special needs groups, like people with a disability or old people requiring nursing care.

- **Innovation function**

An important task of the associations is to understand new problem areas at an early date and to develop innovative approaches to solve them. Examples are holistic debt

advice measures that include the entire social and economic situation of the debtor or the work in hospices where taking into account the existential situation of the dying patient forms an integral part of the work.

- **Advocacy**

As an essential element of their voluntary character/orientation towards the common good and their value orientation, charitable associations and their establishments assume a role of social advocate. This may generate a conflict between this social advocacy function of charitable associations and their establishments and the economic and entrepreneurial interests of the services and establishments, which in practical life they try to overcome always anew in the interest of the people concerned.

By defending the interests of the citizens, in particular against unjustified cuts the State makes into the social protection levels, the associations assume corrective functions.

Some forms of advocacy are:

- Developing innovative structures of support and self-help measures;
- Applying professional knowledge to legislation and the legislative processes with social policy impact, as well as to new support concepts;
- Working in favour of social policy and economic framework conditions that guarantee civic participation and self-help and contribute towards overcoming situations of social needs;
- Individual assistance.

- **Civic responsibility within the associations**

In a decisive manner the associations and their establishments contribute to a treatment of social issues that remains close to the citizen. They enable citizens, who desire to help overcome situations of social need, to achieve joint objectives of serving the common good, and to associate for that purpose. They also accept that associative structures are regularly questioned and used as a source for innovation and change.

- **Forming associations**

The voluntary social services and establishments have grouped together in associations, which as “central associations of non-statutory welfare” enjoy special recognition by the State. These central associations provide for an overall associative cohesion of their respective services and establishments and for a joint safeguarding of their interests. They work together within the umbrella organisation of the “Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege” (BAGFW).

II. Legal requirements

What is the legal and social context for these services and support measures? Is there a legal mandate for action? In what way are the services integrated into a public statutory framework? How much flexibility is there for associative objectives and programmes? Does

the form of organisation take into account specific structures of civil society? How does Germany's federal system of government affect this? Does Community law take into account the particular characteristics of charitable associations' work?

In all Member States voluntary social services are part of a specific societal and political context and are embedded into a constitutional and human rights framework. The latter is often reflected in the legal basis for defining and implementing social protection and security. In Germany the partnership between public and non-profit providers is regulated by special legislation, as illustrated by selected acts listed in appendix 2.

Typical of the legal framework surrounding voluntary social services in Germany are:

- A pluralistic offer of social services and a person's right to choose a social service (so called "*Wunsch- und Wahlrecht*")
- Co-operation as partners with public funding agencies (among others, the municipalities, *Bundesländer*, social security bodies);
- Respecting the autonomy as to objectives and implementation of social assistance before the background of a public service obligation;
- The conditional preference given to private voluntary providers vis-à-vis public bodies, with any commercial providers being put more and more on an equal footing with voluntary providers;
- Provision of social services on the basis of agreements on service types, remuneration and monitoring between the providers of social services and the public funding agencies;
- The recipients' right to choose among the contractually bound establishments, by entering into an own contract with the service provider;
- The adequate provision of public resources in favour of the needy who is legally entitled to a service (person-related support) and/or in the form of payments to the bodies responsible for social services (object-related support).

These framework conditions as a whole are embedded in the federal state and societal system of the Federal Republic of Germany. In principle, the *Bundesländer* and/or the municipalities have prime responsibility for social policy matters. The German Constitution assigns to the national government only limited powers in social matters.

Guided by the legal framework, the providers of voluntary social services operate autonomously so that they have flexibility in particular for implementing the value-orientation of their services. The co-operation with public bodies has to complement each other for the benefit of the people concerned – the law being very precise on this point. This does not exclude that charitable associations may assume tasks in the framework of special state programmes (e.g. programmes to foster the integration of ethnic Germans and refugees, working with conscientious objectors undergoing civilian service as a form of national mandate). In such a case the claim of charitable association to autonomy may face certain restrictions.

Another part of the co-operation with public bodies is that the charitable associations develop new help concepts for new situations of need. They use the experiences thus gained to promote the use of public funds for these new services, e.g. locally in co-operation with the municipalities, or to demand that social security be adapted correspondingly.

The associations usually choose the organisational form of a “registered association” governed by civil law (*eingetragener Verein = e.V.*), which in its “non-profit” form – enjoying special tax advantages – is a guarantor of civic participation. Within the structure of a private association people join together who desire to do something, to achieve shared objectives, be it in the interest of self-help, for assistance to those who are socially excluded, always guided by the interest of the common good. Often the motivation for action is a personal concern when witnessing social need, and also the desire to do something for others. The local framework, life in the community and neighbourhood, the solidarity among people who share the same view mind are equally important elements. For their services and establishments the associations choose other legal forms more appropriate for their increasing entrepreneurial nature, e.g. a private limited company (GmbH), which under certain conditions may be operated on a non-profit basis (gGmbH).

An association is considered to have non-profit status if it pursues purposes of a “non-profit, charitable or church-related” nature. Are considered non-profit actions the promotion of youth welfare, help for the elderly, the public health sector, the welfare sector and sports. Are considered charitable actions the support of physical persons who depend on the help of others, due to their physical, mental or psychological state, or who are needy from a material point of view.

The non-profit status entails tax advantages, particularly with regard to taxation on earnings and turnover. In addition, the giver of donations is entitled to deduct those from his taxes on earnings up to a maximum amount.

Non-profit associations are bound to use their resources timely and in accordance with their articles of association. With the ban on cross-subsidising an association cannot use funds from the non-profit area for funding commercial undertakings. It is not allowed to pay out dividends to members or third parties. Any remuneration for services rendered by members or third parties must not be disproportionately high. Violation of these rules leads to the loss of tax privileges.

The particularities of the law governing non-profit status (*Gemeinnützigkeitsrecht*), the law relating to donations (*Spendenrecht*) and the co-operation with volunteers do not adversely affect competition. Rather the rules governing non-profit status shall enable the establishments run by charitable institutions to offer their services under conditions that are bearable for the person needing help at a personal and/or economic level. This corresponds to the constitutional provision to achieve a social federal State pursuant to Article 20(1) of the German Constitution (see annex 2). For such a purpose the tax benefits for example are in proportion and purposeful. To the degree that there really should exist a competition situation between aforementioned groups of people and undertakings that do not receive such preferential treatment, it would be unavoidable for fulfilling the very purposes that justify tax privileges.

The same must apply to EU competition rules according to which aids distorting competition pursuant to Article 87 ECT are banned in principle, unless public funds are given in accordance with a precisely defined Public mission they are entrusted with and therefore, under certain conditions, are not considered state aids. However, this interpretation of Community law cannot do justice to the particularities of non-profit social services. The broad autonomy of the associations in whose framework

voluntary social services are provided cannot be equated with being entrusted with a public “mission”, which in Community law is one decisive criterion to decide whether public subsidies fall under the definition of state aid. There is hence an urgent need for clarification how an interpretation of which Community rules respects the inevitable consequences arising from the fulfilment of purposes enjoying tax privileges as well as grants designed to strengthen the civic mission of charitable associations, or whether this would require new European legislation (Article III-122 European Constitution – see annex 2).

In business terms such alleged distortions cannot be proved. For example, the regulations and objectives linked to the non-profit character are rather contrary to a market- and competition-oriented activity, with regard to entrepreneurial freedom, and can therefore make the position on the market more difficult for voluntary undertakings.

Using advantageous capital market funds and support schemes for small and medium-sized enterprises (SMEs), flexible investment decisions and faster means of adaptation and modernisation form important competitive advantages for commercial undertakings. Therefore, one cannot maintain the thesis according to which non-profit nature as such leads to a distortion of competition.

Equally, under conditions of the market and competition one has a choice to either operate not-for-profit or for economic gain. In any case, the practical experience in Germany has shown that many providers of social services are conscious of this opportunity to choose. For example, there has been a significant increase in the number of commercial providers of long-term nursing care after access to this area had been opened up.

The charitable associations welcome the Commission’s initiatives on competition rules intended to exempt social services from the obligation of notification. The associations do not want that European legislation globally qualifies their services as non-economic, but instead they desire that the Community rules respect their special characteristics within the meaning of a “civic social enterprise”, and this independently of the question whether their activities are to be qualified as “economic” or “non-economic” according to Community law.

III. Co-operation with civil society and with volunteers

Is there a mobilisation of specific social resources, e.g. by generating involvement among volunteers voluntary workers? Do volunteers find a place in social services, and in what manner?

The voluntary providers of social services compete against other providers. However, the market alone is no guarantor of the common good and social cohesion. The voluntary providers of social services make an important contribution to securing the common good by promoting civic engagement.

Garnering and mobilising civil society’s resources is of a high importance for the European social model and model of society in order to implement the values of the Union, as described in Article I-2 of the Treaty establishing a Constitution for Europe.

Own initiative, involvement and participation of the citizens are important parts of the political and social life as well as the basis of the value and regulatory systems in the Member States. By working for the common good citizens create social cohesion, fill democracy with life and make a contribution to the definition and development of society.

Voluntary social services activate people on behalf of the common good and provide opportunities for action and participation to do so. Thus they make an important contribution towards assuming social responsibility, democracy in action and solidarity.

Citizens who are actively involved are:

- Responsible for social services, for instance as board members of an association providing such services, as members of the parish council in a congregation;
- Actors of social assistance due to feelings of personal empathy;
- Supporters via intangible and financial donations;
- Helpers by assuming concrete tasks in areas of interest to them;
- Facilitators who raise the awareness among and motivate other citizens with regard to social issues;
- Advocates and mediators for the concerns of those disadvantaged or excluded.

The work of volunteers is an important element of voluntary social work. Many initiatives and services in the health and social fields would be inconceivable without voluntary helpers. Volunteers can correct any assessment of social work that is limited to technical-monetary aspects, and can contribute to its innovation. Into the social policy debate they can introduce issues and new social needs for action. They can enrich the quality of life and the atmosphere in social establishments and thus introduce something not found in any catalogue of benefits.

Due to the increasing individualisation and mobility of people and the plurality of lifestyles we witness a breakdown of social environments and a related loss of social connections. Involvement and civic participation counter this trend, but also suffer from it. In recent years, the many newly founded volunteer agencies help with the task of bringing together interested citizens and the providers of social services.

However, social action by civil society is a complementary part of professional assistance. It is neither a substitute for professional assistance, nor is it an element to reduce the cost of social services. To the contrary, using voluntary helpers presupposes framework conditions that enable their work and help prevent overstraining. Part of this is, for example, adequate and technically competent preparation, regular further training, co-ordination, accompanying support and supervision.

IV. Quality, Sustainability and Modernisation

Are quality procedures in use? How is the quality of services being assured? What are the underlying criteria? Are there differences with public and commercial establishments? Do the assistance measures on offer figure prominently in the association's profile? Are they anchored in the structures as mission and task? Which own resources do the associations bring into their work?

There has not been a detailed definition at the European level as to what is quality. Many European documents use terms like sustainability, continuity and reliability, general accessibility and availability, which are very abstract notions quite away from concrete performance, and which cannot be seen as typical quality standards, but rather as indicators of a political framework for action.

A key notion in the European debate on further development of social protection and the social model is “modernising social protection”. High priority is given to modernisation. Related notions are

- Efficiency
- Legal certainty
- Transparency
- Considering changing needs
- Participation
- Sustainability

Often modernisation is seen exclusively from the viewpoint of cost saving. The idea is that services have to become more efficient, prices more transparent, and that costs as a whole must be reduced. Such a view does not take into account the values and objectives of the EU found in the Treaty establishing a Constitution for Europe and the fundamental rights therein enshrined.

However, the notion of quality is important in order to demonstrate that besides a market-oriented/economic viewpoint social objectives too have to be considered when looking at the performance of social services. To a large extent quality depends on resources that society recognises and provides including the significant own resources brought in by the charitable associations themselves, which in part they receive by donations they solicit (appendix 3). It may be possible to find a quick understanding as to structural quality traits. How many beds/places must be available to have a full coverage? What is the staffing ratio (use of professional workers)? But the decisive aspect is how the very processes of assistance are designed in order to achieve the agreed performance objectives and results.

The charitable associations have agreed on joint quality orientations that are to do justice to the service provision, include their value orientation and take into account the approach to help, which relates to the individual person.

The *Bundesarbeitsgemeinschaft der Freien Wohlfahrtshilfe* (BAGFW) defined requirements for a specific service quality with the focus on the following quality orientations:

Quality orientation of social services

Guiding principles: Guiding principles constitute a value-related framework of orientation in the concrete daily activities of social services.

User orientation: Actions and services are designed and provided in the light of the needs of people.

Community and civic orientation: The involvement of volunteers is part of social services as a necessary contribution towards a smooth functioning of a social community.

Employee's orientation: The quality of services depends on the involvement, competence, motivation and satisfaction of the helpers, promoted by respective activities offered by the organisation.

Service orientation: The diversity of socio-pedagogic and caring approaches and methods is taken into account with the objective to improve life situations and chances for participation.

Objective and effectiveness orientation: There must be a constant monitoring of the impact social measures have. Objectives have to be defined and success criteria described that centre around the life situation of the persons in need.

Resource orientation: It is presupposed that available resources, especially of a financial and ecological nature, are handled conscientiously and responsibly in order to guarantee sustainable action.

Quality management: It is necessary in order to guarantee that the quality orientations are being implemented in the social services.

Partnership: The co-operation between the social services and the funding agencies must be based on a partnership necessary for a qualified rendering of services.

In legislative terms these aspects are taken into account mostly by agreements being supposed to be made only with providers of services that fulfil the requirements of capacity to perform, economic viability and financial prudence when rendering the service. Therefore efficiency and transparency are integral parts of agreements. Legal provisions that guarantee an individual right for the citizens create legal certainty.

V. Conclusions

As a result, the memorandum focuses on the following key points:

- Implementing social rights and social justice, promoting social cohesion and securing a balanced economic and social development and the objective of a balanced economic and social development require structures allowing the citizens to become involved and to participate. Within these structures voluntary associations, with regard to their social services offered, are situated in a field of tension between the necessary economic strategies and constraints for action and the objectives and tasks of a non-profit association (German: "Idealverein", a term of Germany's law of associations) designed to be active in social policy and the civic community and to communicate values.
- Continuity and reliability are trademarks of a high quality service provision. The citizens must be able to rely on finding a variety of forms of assistance and support according to their various life situations and orientations. Starting with voluntary work the social services of the charitable associations are geared towards sustainability. In other words, they are integrated into the associative structure, have no limitation in time, and happen on a local level. Charitable associations understand that their very task is to assume social responsibility on a continuous level.

- Mobilising resources of civil society is decisive for the future viability of Europe. Neither the State nor the market can do this, only voluntary organisations are in a position to make it happen. Volunteer involvement needs a structural framework that enables initiative.

This leads to the following political conclusion:

- In its White Paper on services of general interest, the Commission recognises that in particular the social and health services show special characteristics as to aspects regarding social policy and civil society, which have to be taken into account when applying Community rules. We strongly welcome this view. It is expected that the Commission Communication on social and health services, announced for spring 2005, will offer corresponding comments and thus contributes as well to more legal certainty for non-profit providers of social services.
- Herein special consideration needs to be given to:
 - The White Paper viewed the shaping of social services and the EU's role herein as a central topic in the current discussion on the European social model. The Communication ought to elaborate on this. In all this the Member States must keep their powers of defining them with regard to the fulfilment of their mission and the safeguarding of national, regional and local diversity.
 - The formal variety of these services reflects the "diversity of traditions, structures and situations that exist in the Member States" (White Paper) and their cultural diversity. This has to be safeguarded, as the White Paper acknowledges, and it must give consideration to the principles of non-profit legislation existing in all Member States when developing a European social model.
 - In particular the Communication should describe how the approach so far followed by the Commission (see "Monti Package") could be further developed as standard part of the European Community rules, in order to take into account those particularities of social services in general – and of voluntary social services in particular. For example the decision to exempt hospitals should be replaced by a general clause, which equally includes in the exemption rules on state aids other providers of social services.

Appendices

Types of social services

The term of „social services“ covers diverse types of assistance to citizens (within the field of social work), and which are provided in a framework of

- legal claims vis-à-vis national/local authorities (“welfare” services – in particular at the local and regional level);
- legal claims vis-à-vis social insurance bodies;
- non-statutory benefits offered by the municipalities or due to special legal provisions (inclusion programmes, etc.) of the national or regional authorities

and which are rendered by the public providers themselves or by non-statutory providers (associations, self-help groups).

In addition, non-statutory welfare organisations offer services to certain persons, which they fund independently of national institutions or social insurance bodies. Sometimes such offers are later promoted by public bodies given their importance for specific groups of people or may even be incorporated into legislation as a right (example of hospice work).

The social services by non-statutory welfare refer particularly to

- Advice and support
- Training
- Education and care
- Employment
- Nursing care

Social services are not limited to the needy. They exist for all citizens.

Actions for children and youth

e.g. day nurseries, children’s home, pedagogical advice and leisure activities

Support for families and single parents

e.g. marriage and pregnancy counselling, general lifestyle advice, care within the family, rest centres for mothers and whole families

Assistance for the elderly

e.g. day-centres, meals-on-wheels, residential and nursing homes

Services for people with disabilities

e.g. early facilitation, kindergartens and schools, vocational training and support centres, day-centres and residential homes

Nursing care for patients

in hospitals, day clinics, day nursing care units, sanatoriums and counselling centres

Assistance for migrants

e.g. advice on social policy matters for foreigners, counselling for ethnic Germans, psycho-social centres for refugees, integration projects

Assistance for people in situations of social distress

Like shelters for the homeless, debt advice, travellers' aid, counselling services via telephone

Volunteer services / self-help

Volunteer services (e.g. visitation services) and self-help groups organise themselves in all associations and are independent in defining their work.

These services are provided with the help of all methods of social work (individual assistance, group work, community outreach) and within the framework of an approach covering everything, from fully outpatient to fully inpatient. Social services are geared towards the person and need lots of staff. The volunteer services and self-help groups are organized and defined by the volunteers themselves, but they receive support from the associations, for example via the social insurance coverage against accidents only they can provide, and via their programmes for further training.

Legal basis of social services

A. European Legislation

Treaty establishing a Constitution for Europe

Art. I-2 The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

Art. I-46 The Principle of participatory democracy

(1) The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

(2) The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

Article III -122

Without prejudice to Articles I-5, III-166, III-167 and III-238, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfill their missions. European laws shall define these principles and conditions.

Treaty establishing the European Community (Maastricht Final Act)

Declaration N° 23 on co-operation with charitable associations

The Conference stresses the importance, in pursuing the objectives of Article 136 of the Treaty establishing the European Community, of cooperation between the latter and charitable associations and foundations as institutions responsible for social welfare establishments and services.

B. German Legislation

Article 20 (1) of the German Constitution establishing the Welfare State

The Federal Republic of Germany is a democratic and social Federal state.

German Unification Treaty (between the Federal Republic of Germany and the German Democratic Republic, of 31 August 1990)

Article 32 Autonomous social forces (unofficial translation)

The associations of non-statutory welfare and the bodies responsible for non-statutory youth welfare with their services and establishments make a necessary contribution to the Welfare State as provided for in the Constitution. Creating and developing non-statutory welfare and non-statutory youth welfare in the territory mentioned in Article 3 (adhering territory) shall be promoted in accordance with the powers provided for in the Constitution.

Social Security Code (SGB I)

The Welfare State enshrined in Article 20 of the German Constitution is being implemented within the framework of the Social Security Code.

An important starting point is the right of an individual to receive assistance and his right to choose.

SBG VIII – Children and youth welfare

§ 5 Right to choose (unofficial translation)

(1) The beneficiaries are entitled to choose among establishments and services of different providers and to voice requests as to the types of assistance. They shall be informed of this right.

(Section 2 contains a legal proviso with regard to the proportionality of costs.)

SGB IX – Rehabilitation law

§ 9 Right to choose of the beneficiaries (unofficial translation)

(1) When deciding on services and during the provision of services for participation consideration shall be given to the legitimate desires of the beneficiary. In doing so consideration shall be given to the personal situation, the age, the gender, the family and the religious and worldview needs of the beneficiary; otherwise § 33 of Section I shall apply. Consideration shall be given to the specific needs of mothers and fathers with a disability for their child-raising tasks as well as to the specific needs of children with a disability.

(4) The services for participation require the consent of the beneficiary.

SGB XI – Long-term nursing care

A corresponding provision is also found in the Long-term Nursing Care Act (SGB XI). It stipulates that

- The benefits shall help the needy person, notwithstanding their need for assistance, to lead an independent and autonomous life inasmuch as is possible, and which is in line with human dignity (§ 2 Sub-par.1)
- The beneficiaries have the right to choose among establishments and services ... (§ 2 Sub-par. 2)
- Attention has to be given to the religious needs of the beneficiaries. Upon their wish they shall receive inpatient services in an establishment where it is possible to be cared for by members of the clergy of their own denomination. (§ 2 Sup-par. 3)

SGB XII – Social assistance

§ 3 Social assistance depending on the characteristics of an individual case (unofficial translation)

(1) Type, form and amount of social assistance depend on the specific characteristics of the individual case, in particular on the person of the beneficiary, the nature of his needs and the local situation.

(2) Consideration shall be given to the desires of the beneficiary with regard to the type of assistance inasmuch as such is appropriate. Consideration shall be given to the desires of the beneficiary to receive assistance in an institution, a home or a similar establishment only if such is necessary due to the characteristics of the individual case because other forms of assistance are not available or insufficient and only if there are agreements with such an institution, home or similar establishment

...

(3) If the beneficiary so desires he shall be in an institution where he can be cared for by members of the clergy of his denomination.

The partnership with and the special position of voluntary non-profit providers is regulated as follows:

SGB I – General provisions

§ 17 Provision of social services (unofficial translation)

(3) By co-operating with non-profit and autonomous institutions and organisations the responsible public bodies make certain that their activities and the activities of aforementioned institutions and organisations effectively complement each other to the general benefit of the beneficiaries. In doing so they must give consideration to their independence with regard to objectives and performing of tasks.

SGB II – Employment promotion

§ 17 Establishments and services for integration actions (unofficial translation)

(1) When providing services for integrating people into the labour market the employment agencies shall not create new services and establishments inasmuch as adequate third party services and establishments are available, are being developed

or can be created in a short period of time. The employment agencies shall give adequate support to the providers of non-statutory welfare in their efforts to guarantee basic security for job-seekers.

SGB VIII - Children and youth welfare

§ 3 Public and non-statutory youth welfare

(1) Youth welfare is characterised by the diversity of providers of differing value orientations and a diversity of contents, methods and working styles

(2) Bodies responsible for non-statutory youth welfare and for public youth welfare provide the services of youth welfare. Any service obligations established by this Section refer to the providers of public youth welfare.

(3) Other tasks of youth welfare shall be assumed by the providers of public youth welfare. Inasmuch as this is clearly stipulated providers of non-statutory youth welfare may assume these tasks or be entrusted with their implementation.

§ 4 Co-operation between public and non-statutory youth welfare bodies

(1) The bodies of public and non-statutory youth welfare shall work in a partnership for the benefit of young people and their families. In doing so, the former shall take into account the independence of non-statutory youth welfare as to objectives and implementation of tasks and as to the shaping of their organizational structure.

(2) Wherever it is possible for recognised non-statutory providers of youth welfare to run adequate establishments, services and events or whenever it is possible to create such in good time, public youth welfare bodies shall refrain from own actions.

(3) Public youth welfare shall promote non-statutory youth welfare in accordance with this Section and in doing so shall strengthen the various forms of self-help.

SGB XI – Long-term nursing care

§ 11 Rights and duties of nursing care establishments (unofficial translation)

(2) When implementing the stipulations of this Section consideration shall be given to the diversity of bodies responsible for nursing institutions as well as to their independence, own image and autonomy. Consideration shall be given to the mission of church-related and other providers of non-statutory welfare to nurse, care for, console and accompany during the process of dying those people who are sick, frail and in need of long-term nursing care. Independent non-profit and private providers shall have preference over public providers.

SGB XII – Social assistance

§ 10 Relationship with non-statutory welfare

(1) This Section does not affect the position of the churches and religious groups governed by public law nor the associations of non-statutory welfare as institutions responsible for their own social services and their activities for fulfilling these tasks.

(2) In the course of implementing this Section, the bodies responsible for social assistance shall pursue co-operation with the churches and religious groups governed by public law as well as with the associations of non-statutory welfare. They shall respect their independence as to objectives and implementation of tasks.

(3) Such co-operation shall be designed to ensure that social assistance and the activities of non-statutory welfare effectively complement each other in the interest of the general benefit of the beneficiaries. The providers of social assistance shall give adequate support to the associations of non-statutory welfare in their actions in the field of social assistance.

(4) If the service in an individual case is rendered by non-statutory welfare associations the providers of social assistance shall refrain from the implementation of own measures. However, such shall not apply to the payment of cash benefits.

(5) In accordance with the provisions of this Section the providers of social assistance are entitled to generally involve the associations of non-statutory welfare in the implementation of their activities or to entrust them with the fulfilling of such tasks if the associations agree with such a participation or entrusting. The providers of social assistance shall remain responsible vis-à-vis the beneficiaries.

The provision of services is regulated by service provision contracts, framework recommendations and quality agreements. Analogue stipulations are to be found in all Social Security Codes.

SGB V – Medical assistance (unofficial translation)

§ 111a Service provision contracts with establishments of the *Müttergenesungswerk* (foundation responsible for recreational homes for mothers) or similar establishments

(1) The health insurance bodies are entitled to allow the provision of inpatient medical services as a prevention measure for mothers and fathers (§ 41) only in establishments of the *Müttergenesungswerk* or similar establishments, or in establishments equipped for father-child-measures, if there is a service provision contract with such an establishment. § 111 Sub-par. 2, 4 (1) and (2) and sub-par. 5 as well as § 111 b apply accordingly.

§ 111b Framework recommendations regarding prevention and rehabilitation measures

The central associations of health insurance bodies, jointly and uniformly, and the central organizations responsible at the national level for representing the interests of outpatient and inpatient prevention and rehabilitation measures, with consideration given to the directive pursuant to § 92, sub-par. 1 (2) N° 8, shall submit joint framework recommendations for outpatient and inpatient medical prevention as well as for outpatient and inpatient services of medical rehabilitation; in the case of prevention and rehabilitation establishments for which a Church or a religious community governed by public law or another non-statutory non-profit organisation is responsible, the Church or the religious community or the charitable association that

are responsible for the establishment may agree on these framework recommendations together with the other partners of the framework recommendations.

§ 137d Quality assurance in the field of outpatient and inpatient prevention or rehabilitation

(1) For inpatient prevention or rehabilitation establishments, for which there is a contract pursuant to § 111, the central associations of the health insurance bodies jointly and uniformly shall agree on the measures for quality assurance pursuant to § 135a, sub-par. 2 as well as on the basic requirements for an in-house quality management – with the central organisations that at a national level represent the interests of inpatient prevention or rehabilitation establishments.

(1a) For establishments for which there is a service provision contract pursuant to § 111a, the central associations of the health insurance bodies jointly and uniformly shall agree on the measures for quality assurance pursuant to § 135a, sub-par. 2 as well as on the basic requirements for an in-house quality management – with the central organisations that at a national level represent the interests of the *Müttergenesungswerk* or of similar establishments.

(2) For service providers offering outpatient services for prevention or rehabilitation pursuant to § 23 sub-par 2 or § 40, sub-par. 1, the central associations of the health insurance bodies jointly and uniformly, the Federal Association of Panel Doctors (*Kassenärztliche Bundesvereinigung*) and the federal associations of the service providers that offer outpatient prevention and rehabilitation measures, shall agree on the measures for quality assurance pursuant to § 135a, sub-par. 2 as well as on the basic requirements for an in-house quality management.

Legislation governing the non-profit status

The fiscal code as well as its implementing regulation describes the requirements for non-profit character and the related tax advantages.

Fiscal code (unofficial translation)

§ 51 General provisions

If the law provides for tax relief because a corporation pursues exclusively or directly non-profit, charitable or church-related purposes (endowed with tax privileges), then the following provisions shall apply:

§ 52 Non-profit purposes

(1) A corporation pursues non-profit aims if its activity is designed to unselfishly promote the general public's material, mental or moral well-being.

(2) Under the conditions described in Article 1 activities that promote the general welfare are in particular ...

2. the promotion of youth welfare, support for the elderly, public health sector, non-statutory welfare sector and sports...

§ 55 Unselfishness

Activities of promotion or support are unselfish if they primarily do not pursue own economic aims – for example commercial purposes or other profit-making intents – and if they fulfil the following requirements: ...

1. Resources of the corporation can be used only for purposes as defined by the articles of association. The members or partners shall not receive any shares in profit and ... no other payments out of the funds of the corporation ...
2. ... they do not benefit any persons by payments which are alien to the purpose pursued by the corporation, or by disproportionately high remunerations.

§ 53 Charitable purposes

A corporation pursues charitable aims if its activity is designed to give unselfish assistance to people (1) who are dependent on the help of others due to their physical, mental or psychological state or (2) who receive an income not higher than ...

Legislation on non-military service by conscientious objectors

The use of conscientious objectors rendering substitute non-military service helps to fulfil a national mandate that derives directly from the compulsory nature of military service and is seen as an additional service.

Art. 2 Purpose (unofficial translation)

(1) Non-military service shall be used where there is a lack of resources to fulfil important community tasks or where such resources prove insufficient.

(3) A young man doing non-military service performs a work of public interest.

Art. 3 Work of public interest (unofficial translation)

A work is of public interest if the person doing non-military service performs this work with a public institution or with a private institution active in a non-profit way.

Art. 3a Objectives (unofficial translation)

Non-military service contributes towards a strengthening of (a) social cohesion, in particular the improvement of the situation of people dependent on care, support and long-term nursing; ...

Funding of social services

A variety of instruments are available to fund social services. They depend on

- Administrative competence and
- Kind of service

Funding follows legal stipulations and the respective commitments of public funding agencies (municipalities, *Länder*, State, social security bodies) vis-à-vis the beneficiary having a legal claim to services, and also via programmes.

Award of grants

- of a global nature for central tasks of an association
- for providing a specific service
- for personnel costs
- for investments

Award of (case by case) lump compensation

- for settlement of individual services
- also in the form of personal budgets

Agreements on remuneration for services

Service agreements and delivery contracts form the framework for services

Promotion via projects and programmes

For implementing specific programmes (e.g. advice on social matters for migrants)

Use of own resources

Own resources are used fully, e.g. when establishing new activities, or on a pro rata basis. Depending on the programme in question they are required in varying percentages. They also serve for accessing public funds. The associations generate their own resources via membership fees, donations, legacies, lottery moneys, foundations, church tax. The diversity of the offer is made possible in particular by the specific legal position of the associations, and the legal privileges linked to their non-profit character and allowing the acquisition of own resources, which in turn allow the funding of new activities and lead to a mobilisation of public funds.

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