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What Comes After the European Welfare State?

On the Reorientation of Social Policy in Europe between State, Market and Civil Society

by **Christoph Sachße, Adalbert Evers and Claus Leggewie**

Abstract

Comprehensive report on a workshop held in the framework of the European Cultural Dialogue, November 2007, directed by Claus Leggewie (Essen), Adalbert Evers (Gießen), Ludger Heidbrink (Essen). Participants: Uwe Becker (Amsterdam), Hartmut Kaelble (Berlin), Franz Xaver Kaufmann (Bielefeld), Alexandra Kemmerer (Würzburg), Helmut König (Aachen), Stefan Leibfried (Bremen), Ilse Lenz (Bochum), Thomas Leoni (Wien), Emanuel Richter (Aachen), Christoph Sachße (Brüssel).

The European Cultural Dialogue in Essen offers to the European public and the European thinking a forum for open, critical and integrative talks. The project gets conceived and coordinated in the framework of the RUHR 2010 – cultural capital of Europe by the Institute for Advanced Studies in the Humanities (KWI) in Essen since 2005.

This special workshop has been held in cooperation with the EU-funded research network of excellence "Civil Society and New Forms of Governance in Europe" (CINEFOGO), directed by Thomas Boje (Roskilde) and represented at the workshop by Adalbert Evers.

Introduction

The “European social model” is playing a role in a wide variety of debates on Europe; social-democratic politicians in particular are calling for the EU to further develop from the current economic and monetary union into a “social union”, to prevent wage dumping among Member States and to serve as a model for the global economy. In most cases, these calls are of a defensive nature: “[...] In light of the increasing threats of poverty and social exclusion, citizens also expect a social design for Europe from the EU” (Martin Schulz), although this may also be used in the offensive, if social cohesion is interpreted as both requirement and engine for economic competitiveness on global markets. Even Euro-sceptics regard the EU as the only globally possible economic and social model (Judt 2005), whereas Europe-enthusiasts across the Atlantic are convinced of Europe’s superiority precisely because of its social policy (Rifkin 2004).

However, increasingly doubts can be heard whether “the welfare state as we knew it” does in fact still provide the citizens of Europe with **support and latitude**, since the traditional tasks of social policy (i.e. basic protection in economic emergencies and risks of life) are increasingly failed because of **exclusion processes** and since due to this exclusion it seems no longer possible for relevant groups of the European population to participate as active citizens and members.

This is associated with a considerable swing in the general mood: for the first time in

decades, older generations in Europe no longer anticipate that their children and grandchildren “will have it better one day”; this perception is confirmed by the younger generations, in particular with regard to demographic change and the associated risk of poverty in old age, which during the “glorious decades” of Western European social welfare states after 1945 had been largely banished.

Against this background and on the basis of a day-long expert talk about the “European Social Space” in November 2007, the Institute for Advanced Study in the Humanities (KWI) in Essen is publishing the present Policy Paper. It mainly examines how in spite of the strong path-dependencies of national welfare policies and the continuing weakness of positive integration of welfare-state tasks (Scharpf 2002), convergences and standardisations may still develop towards the creation of a “European social space”.

1. The Welfare State in European Comparison

As European unification is progressing from economic towards political integration, the **social dimension of the European Union** – originally a mere appendage to economic policies – too has taken shape. Although the original social-policy competences of the EU are very limited, discussions regarding a “European welfare state” are now on the increase. Such “European welfare state” has mainly two dimensions: on the one hand it is about the “welfare state in Europe”, total sum of all Member States’

social protection systems and on the other hand about genuinely supra-national welfare state structures and services provided directly by the European Union.

By global comparison, the social welfare state is a unique social-historical feature in particular of Western Europe. All current EU Member States have comprehensive social security systems, which in some cases date back more than a century and which are deeply rooted in the respective society's social, political, and cultural traditions. While from a historic perspective it is possible to assume increasing **convergence** of national security systems in the second half of the 20th century (Kaelble 2004), an empirical study of the systems in place in EU Member States shows that considerable **differences** still exist with regard to organisation, funding, and level of benefits and that there are no indications of coalescence in the course of the last few decades (Alber2006).

For a differentiated appraisal, Stephan Leibfried suggests a distinction between **four systemic levels**:

- the level of organisation and funding;
- the setting up of policy corridors for Member States;
- the policy outcomes level, and
- the level of underlying value orientations.

The level of Organisation and Funding

On the organisation and funding level, the individual Member States' various social security systems differ significantly.

Example I is health protection. Here the

respective mechanisms range from the comprehensive tax-funded state health financing and service system in Denmark over to the statutory social insurance based health systems in Belgium and Germany. In between lies a variety of hybrid forms, in particular various forms of combinations of tax-funded health services for benefits in kind (medical treatment) and mandatory social insurance for cash benefits (sick pay) e.g. in Finland, Great Britain, and Ireland. The systems of Italy and the Netherlands cannot really be attributed to either of those basic types. Even within the group of social insurance based systems, contributions are raised in very different ways. In most cases funds are raised jointly by employers and employees, with employer's shares usually higher than those of employees. Employers' and employees' contributions are equal only in Germany. In some EU countries contributions are exclusively borne by employers, in others by all citizens. In the course of the enlargement processes of the EU the divergences between the various forms of organizing and funding health care systems have increased repeatedly.

Example II – old age provision systems in the EU – too is still characterised by a wide variety of forms. Social security systems, co-funded by contributions of employers and employees, like in Belgium and Germany co-exist with tax-funded systems that provide a basic provision for all old-age citizens (as e.g. in Denmark and Spain), complemented by a mandatory social insurance.

The examples however demonstrate not only divergence but as well a basic convergence process that has taken place

in the course of the last decade: **the state is increasingly retreating from funding**. Even if one sets aside the role of private provision for old age security, funding raised by employer and employee contributions outweighs the portion of public tax based contributions – regardless of whether the system provides for wage-related pensions or a standard basic support scheme.

Corridors of Action

The influence of the EU can make itself felt by rules and regulations that have an impact on the Corridors of action of the Member State's welfare policies. One example is the national **organisation of social services**. Their expansion from a limited and special system that provided for target groups with special social problems over to large systems that offer care and support for a wide range of the population in the second half the 20th century has as a by-effect created as well profitable service markets, which may be attractive for private for-profit organisations. Hence – as a gateway towards supra-national regulation – the question arises to what degree and in which ways the European Unions' rules for establishing cross-national single markets and competition should be extended to services of general interest and more specifically to social services (Lippert 2005).

The tension-filled relationship of **EU competition law** and national traditions in the field of services of general economic interest can for example be studied with a view on the special status saving banks and banks owned by the federal states have by tradition in Germany, a status that has been

questioned by the EU. Nowadays the special regulation of social services as it can be found in Germany and other member states is as well under review.

In September 2000 and again in the 2003 "Green Paper" the EU Commission emphatically praised services of general economic interest as a "key element of the European social model" and declared that the regulations of this area should fall in the competence of the various political levels of Member States. That indicated the maintenance of the Member States' sovereignty in the sector. However, the supposed clarity of this vote quickly dissipates if one takes a look at the respective instructions of the Community Treaty. Although Art. 16 stresses the relevance of services of general economic interest within and for the European Union, other articles put private before public action. Art. 86 (2) says, that organisations entrusted with the operation of services of general economic interest will be subject to the EC Treaty's competition regulations, presupposed that the application of such rules does not obstruct the performance of the particular tasks assigned to them.

Background: With regard to the applicability of Community competition law, the European Court of Justice has developed a "**functional**" definition of organisations that **provide services**. It depends neither on the legal form of the organisation (state-public, private enterprise, third sector organisation that is not-for-profit) nor on its allocation to public or private law, but exclusively on whether or not any **economic** activities are

performed. Accordingly, applicability of the Community's single market and competition regulations on services of general economic interest and more specifically, social services is decided by the answer to the question whether their providers perform any "economic activity". Basically then every type of provider, a state public one, a not-for profit organisation and a private enterprise should basically get subjected to the same market and competition rules. There are some additional preconditions and some exceptions stated for this conceptual framework wherein market arrangements are the normal proceeding. For such EU competition law it is e.g. required that the respective services are offered across the borderlines of member states. Exceptions are stated for the realm of sovereign tasks in the narrower sense as well as national education systems and charitable organisations where economic operations are clearly not central. Obviously between the already privatised and marketised zones of service offers and such key areas, there is a wide zone in between, which also covers many social services.

European competition law therefore forces the **re-balancing** of the public and private elements in the **Member States' welfare mix**, of state regulation and provision, the role of not-for-profit organisations and the role of commercial providers. In the long term this will lead to an adjustment of organisational structures and a corridor that leads to various forms of market-

„Every type of provider should basically get subjected to the same market and competition rules”

isation. What contributes to that is the fact that beyond specific EU policies, the welfare states are currently facing acute financial, labour-market, demographic and international challenges, which in all Member States enforce privatisation of social responsibility, a shift of social affairs from state and municipalities to individual, family, and other private entities. A uniform pressure to act will lead to the adaptation of similar solutions.

The Policy Outcomes Level

What can be observed as well is a **convergence of the policy outcomes of national social policy** on the European level.

The health sector is an instructive example for this trend. The European Court of Justice with several rulings has paved the way for cross-border health care claims within the

European Union.

For example, people covered by German statutory health insurance may utilise ambulant services in other EU countries at the expense of their German health fund, as long as the costs do not exceed those in Germany. In reverse, German medical doctors can treat foreigners from other EU countries in Germany and settle the costs with their health insurer abroad. The Act regarding Modernisation of the Health Sector (Gesetz zur Modernisierung des Gesundheitswesens) of 01 January 2004 furthermore provides for the option of German health funds to enter into agreements regarding medical treatments of their insured with service providers in other EU countries. In this connection it can

be expected that the services and charges law in the individual Member States will be adapted to make cross-border health care options more practicable.

As a **first conclusion** we can note that even after decades of joint EU membership there still exists a wide diversity of organisational forms and structures of Member States' social security systems and of their ways to organize social services (Kaufmann 2003). The path-dependence of national systems – which concerns not only organisational forms, but also the power of the interests organised in those systems – is an effective obstacle to international learning and convergence among Member States. The stages of the EU's enlargement since the 1970s have even increased the **diversity of national systems**. On the other hand, both through EU market policy and comprehensive social development trends there are undeniably pressures towards **adaptation processes**.

Underlying Value Orientations

Even if this has so far only little effect on institutional diversity, a specific feature of all this is obviously a underlying uniform value orientation: while the social welfare state as dictum of the organisation of public authority is accepted by all EU Member States, it gets realised in different ways. The various systems are an expression of a form of implementation of European principles derived from Judeo-Christian and secular-humanistic tradition, of which diversity is not the least.

2. Socio-Political Capacities of the EU

As is generally known, the process of European unification as it had been conceived of in the Treaties of Rome in 1957, aimed for an economic union, i.e. mainly for the removal of all boundaries and obstacles to free market development and not for guaranteeing citizens' living conditions. The Community's original social-policy components – occupational safety and equal payment for men and women – were relatively peripheral and initially were used to as a secondary construction that allowed to implement increasingly market freedoms at the international level of the Community.

Now a **change in trend** is perceivable, albeit only at second glance. A first glance shows: while the EU has gained considerable competences in the field of welfare policy, which are regulated in a separate chapter of the EC Treaty (Art. 136-145), all impressive catalogues of competences have the common feature that they so-to-speak are entwining around Member States' competences, i.e. supporting and complementing but not substituting the activities of Member States, as set forth in Art. 137 (I). Furthermore, any top down harmonisation of the relevant laws and regulations of the Member States by Community measures has been expressly excluded in Art. 137 (II). Besides that, the EU does not have the financial means to implement independent welfare policies. Lacking fiscal sovereignty it is instead sustaining on its Member States' con-

tributions. Social policies and the massive finances linked to them are in their entirety occupied by the Member States; they have more or less comprehensive social security systems in place. In this situation prospects for the development and expansion of a genuinely European social security system are conceivably poor.

The reason for this **resistance against a direct supra-nationalisation of welfare policy** underlying the notions of a European social space is the existence of weighty national interests in preserving the status quo: today, the welfare state serves as a major **legitimation for national policies**; there, policy makers have hardly any interest in ceding competences (as has been the case with many other policies). In addition, several influential interests are operating within national systems, e.g. medical doctors and other service providers, who also are difficult to win over for changes. The heterogeneity of these interests is strengthening their veto-potential, as each one individually is opposing a uniform European regulation. The considerable **discrepancies in Member States' development stages** further complicate a joint welfare policy. Wealthy countries are afraid that their high standards might be lowered, and poor countries fear that theirs might be raised, resulting in a loss of their competitive advantage. This is accompanied by high consensus requirements in the process of EU decision-making. Preconditions are already high for a qualified majority in accordance with Art.

“The heterogeneity of these interests is strengthening their veto-potential, as each one individually is opposing a uniform European regulation”

251. In addition, a whole series of relevant decisions has to be made unanimously. All in all, nearly insurmountable obstacles are piling up prior to the introduction of a European social security system. Europe is facing the paradoxical situation that the Community's market liberalisation policy has undermined sovereignty and autonomy of the national welfare states – this is referred to as “semi-sovereign welfare state”, while the Community for said reasons is unable to create supra-national solutions.

A second glance shows that **“by-pass policies”** (Obinger / Leibfried / Castles 2005) lend themselves for this situation, i.e.

policies bypassing existing resistance. They must not cost any money, which is not available without Member States' approval, and must not require any competence, which Member States' are not willing to cede. Two such strategies are now beginning to take shape: the EU's Open Method of Coordination and its anti-discrimination policy.

Strategy I: Open Method of Coordination

The Open Method of Coordination (OMC) was introduced in the European Commission's White Paper on “Growth, competitiveness and employment” (1993). In 2000, the European Council of Lisbon applied it to poverty reduction/social inclusion, old age security, health care and the care for older people as well as integration of migrants. As part of the OMC, Member States' voluntary cooperation facilitated by the EU Commission is

targeted in areas where the EU has no formal jurisdiction, but where cooperation is desirable all the same: "The open coordination method is applied on a case-by-case basis. It promotes cooperation, exchange, established procedures as well as agreement on joint objectives and guidelines of Member States, which in some cases such as employment and social exclusion are supported by Member States' action plans. This method is based on regular monitoring of the progress made in realising these objects and gives Member States an opportunity to compare their efforts and to learn from the experiences made by others." This means the strategy is backing processes of convincing and mutual learning rather than formal-binding processes. Naturally, results along this path can be expected only gradually and in the long term.

Strategy II: Anti-Discrimination Policy

The EU's anti-discrimination policy has an indirect effect, which however ultimately has a stronger integrating effect. It is a regulatory strategy in the strict sense: the EU is enacting regulations, which have to be implemented and funded by Member States. The original Treaty of Rome establishing the European Community (1957) prohibited two types of discrimination: discrimination due to nationality (Art. 7 (1) EEC) or due to gender (Art. 119 EEC). The Amsterdam Treaty added seven further instances: discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 13 (1) EC), i.e. currently nine types of discrimination are prohibited.

The European Commission has enacted **four**

relevant **directives**: the so-called Anti-Racism Directive of June 2000, the Framework Employment Directive of November 2000, the so-called Gender Directive of September 2002 and the Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services of December 2004. All 25 Member States enacted implementation legislation on the basis of those directives. Compliance of national legislation with European Commission directives is reviewed and – in several cases – is currently being enforced in infringement procedures. Germany implemented the directives in the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz) of August 2006.

The EU's anti-discrimination policy is based on US models, which in a certain way are replacing the protection regulations traditionally in use in Europe. Unlike the social security systems of European nations, it does not target the material protection against specific risks of life, in particular of employees, but rather the implementation of principles of formal equality (with possible financial compensation in case of violation). Any costs incurred must be borne by discriminating employers or other (potential) contracting parties of the discriminating party and not by EU or Member States therefore alluded to a "welfare state at the expense of third parties".

Up to now such regulations had been alien to the conventional social security systems of the Community's Member States. In light of increasing pluralisation of European

societies due to **migration** and the associated restrictions of access to conventional security systems this approach – i.e. implementing formal-universalistic principles rather than setting up specific access requirements – is indeed plausible. In any event, the EU is currently deploying a dynamic antidiscrimination policy, which might serve as foundation of and gateway towards a specific EU welfare state.

3. Independent Welfare Work in Europe

In addition to the dimension of protecting citizens against specific risks of life, the welfare state also covers the civil society dimension of guaranteeing civic participation and hence promoting a democratisation of state and society – a core function of welfare policy, which in many instances appears to have fallen into oblivion. One might just think of statutory health insurance, which – as a statutory corporation organised by employees and employers – in the days of the German Empire offered by its jobs in administering the systems was the only opportunity for social democrats to climb up the social ladder in order to be actively involved in shaping society. The discussion about the future of the European welfare state thus primarily comprises the question what the European welfare state does for civil society. This can be demonstrated by using once again the example of the organisation of social services in Europe.

Social services, i.e. public facilities for the care and education of children and youth as well as the care of older people form besides

social security systems a second pillar of the welfare state and are integrated in a special way in national welfare traditions and cultures. In Germany, they have been organised as a “dual system”. Since the Weimar Republic, they rest on a specific form of co-existence and cooperation of public (local/municipal) authorities and independent (in particular denominational) welfare organisations (third sector/not for profit organisations). This dual system has been based on the principles of subsidiarity, i.e. the legally guaranteed primacy of third sector/not-for-profit organisations with a simultaneous duty of public organisations to promote them and to assume an overall responsibility. This construct is rounded off by the independent organisations’ legal status as organisations operating for the public good. This assigns to the various associations, voluntary bodies and charities in civil society a central role in rendering social services. However since the 1990ies, the cooperation of public and independent welfare organisations – based on the principle of subsidiarity – has been increasingly replaced by or at least is overlapping with a new form of public-private-partnerships. These are the publicly-regulated social markets in various areas of social service provision, where now both not-for-profit and commercial providers are involved and refunded alike for specified service tasks by public authorities and the respective social insurances. Public organisations are re-treating to assume the role of coordinators regulators and co-financing organisations.

As it has already been sketched above, such trends to treat not-for-profit and commercial

service partners alike in the framework of market rules and laws that enforce competition are in line with an EU policy that wants to install market rules in the area of services of general economic interest. The EU therefore has hardly any interest at all in safeguarding or renewing the specific role, not-for-profit organisations had so far as service providers in national service systems (Evers 2001). While ignoring them as specific service providers the European Commission however recognises not-for-profit organisations in the various fields of social and welfare services as dialogue partners in policy and participation processes (e.g. in the institutionalised “social dialogues”). There they figure as representatives of the service consumers and as advocacy organisations for special groups of citizens in need. This attitude of the EU is legitimated by the fact that today not-for-profit organisations that have the status of operating for the public good are no longer in a position where they can claim to be offering services of a quality and an orientation that is basically different from that of their commercial competitors. Many of the service-producing organisations that operate under the umbrella of the not-for-profit and public-good oriented associations and welfare organisations have assimilated to the style of operation of the commercial providers. The formal not-for-profit classification is no longer a sufficient evidence for a different service quality and style of operation. It should however be taken into account, that throughout Europe a wide variety of novel and unconventional ini-

tiatives, organisations and projects can be found – both as part and outside the big statutory welfare associations in the third sector – that provide specific quality in social services and forms of delivering them, for special groups in need, like the long term unemployed, or in special areas like city quarters in decay.

EU competition policy with its functional definition of providers given by the European Court of Justice equates all economic activities be they for-profit or not-for-profit and therefore asks for treating all providers (of social services) the same – except the few and small purely social or charitable forms of service provision. It basically negates the option of special forms of economic activity outside the market economy, the perspective of a “moral economy” (E. P. Thompson), which has a long tradition in the various national forms of providing social services by associations or cooperatives. By supporting and promoting such moral economy, EU policy could help to develop it as a part of a European civil society instead of leaving it to lead a shadowy existence in national niches. Consequently, the strengthening of civil society elements in the organisation of social services in Europe needs to supplement and possibly even counter-balance the present policy of privatisation and marketisation of services. Supplementation could happen by further developing the status of service users from clients to consumers. By way of acknowledging third sector and not-for-profit organisations as advocates of groups in

“Many of the service-producing organisations have assimilated to the style of operation of the commercial providers”

need, consumers could be politicised and activated as “consumer-citizens”. Additionally, a policy of counterbalancing could strengthen not-for-profit organisations in their role as special providers – as elements of a different “moral” and “social” economy in civil society. Both contribute to the democratically-relevant perspective of participation.

Outlook

On the national level and with the aid of the welfare state, Europe has found a wide range of forms to civilise the market dynamic and to reconcile democratic with social values. If this social history cycle appears to draw to a close under the pressure of economic globalisation, will the European Union be able to develop new forms of a strong welfare state or will it subject social policy entirely to the logic of economic competition? In this Policy Paper we are arguing that social security institutions and social services are a test case for type and scope of welfare state and civil society. Organisations in both areas – if they also act as political players – might act to pry open the sterile dualism of state and market.

This may be used to adjust the aberrations of the welfare state, which have contributed to the fiscal crisis of public budgets and to inflationary transfer ratios. In the often-postulated transition from an all encompassing welfare “producing” state to a welfare guaranteeing state, where it does no longer provide (everything) itself but rather guarantees provision, stakeholders in the civil society are accruing responsibility for a

joint organisation of services of general interest, becoming partners in shared public tasks. The associated concept of the activating state does not mean that costs are passed on to the population, which is already under pressure well into the ranks of middle class due to stagnating real income and increasing labour market risks. The intelligent conjunction of solidarity standards with economic efficiency and political participation is the challenge in the process of giving shape to a European social space, whatever its design may be.

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Editorial

© Kulturwissenschaftliches Institut Essen (KWI), Goethestraße 31, 45128 Essen

Phone +49 201 7204-0, Fax +49 201 7204-111, kwi@kwi-nrw.de

Responsible: Claus Leggewie, Director KWI

Editors: Isabelle De Bortoli, Freelancer, Magdalena Schaeffer, KWI

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