Frank Schulz-Nieswandt

The dynamics of European definition policy of health and social services as services of general (economic) interests

common market; European integration; European social model; Inhouse principle; (Social) services of general (economic) interests

There is a deep pressure of the common market law on the new regulation of the markets of social and health care services. It will be possible that social and health care markets will be defined as services of general economic character.
In this case the common markets will be an exogenous impact factor on the reorganisation of the national social policy. Therefore this development will be the result of a new distribution of competences in the multi-level system of Europe, but also an important step in the development of the European social model. The welfare state in this developmental context will be only a guarantor of public social services. And we can observe a convergence of some endogenous trends in national social policy reform politics.

Although Europe, since its emergence after 1945 should be basically regarded as an organisation for peace[1], and although Europe is also eager to define itself culturally, less geographically[2], as a value-driven community space, the EU essentially and primarily represents an economic space that is understood as a free internal market and that has been partly transformed into a currency union (with considerable effects on the monetary and, consequently, in the financial policy of the Member States).

I. The internal common market and its dynamics of integration

This internal market has no tariff and non-tariff restrictions to trade. It is characterised by economic freedom of movement (capital, labour, goods and services) increasingly virtually adopted as constitutional law. In essence there is a universal anti-discrimination law.
The process of integration in relation to this common internal market has made great advances and now places further areas of law and regulation of the Member State's societal life under a corresponding pressure towards adaptation and modernisation.
Against this background there is controversy and discussion as to whether Europe has already acquired its own state character, or at least state-like characteristics, or whether the Member States are still sovereign and in principle have bound themselves only to a horizontal treaty under national law. The Member States are after all "Masters of the

1 This is often no longer questioned.
2 Both are quite difficult.

Treaties", the EU Commission *only* "Guardian of the Treaties". Different variants of the interpretation of the EU as a federation of states or a federal state compete with each other. However, the little word "*only*" with regard to the function of the Commission as "Guardian of the Treaties" is central: how are the treaties interpreted? Here the central role of the European Court of Justice (ECJ) takes effect. What consequences must be drawn as a result of such interpretation?

II. The reality of social service policy as a shared competence

However this problem is regarded in jurisprudence and juristically, the political architecture of Europe as a political system is in any case to be understood as a multilevel system[3] (from the German viewpoint: EU level, federal state level - federal subdivisions: Länder, municipalities). This results not only in issues of division of competence, but also in vertical interlocking and horizontal intertwining (Schulz-Nieswandt/Mann 2009).

1. The problem of balances of power and weighting of goods

We assume, against the background of these assessments, that Europe *de facto* already operates a shared competence in social policy, including health policy (Hervey 2008). Europe practices this shared competence independently of whether legal regulation will be adjusted on the basis of Treaty of Lisbon amending the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC) – a constitution-compensating treaty, which might even fail again. This shared competence, i.e., the practice of a common exercise of power, does not contradict the idea of subsidiarity under Art. 5 b TEC. Art. 137 and Art. 152 TEC do not necessarily run counter to this power-sharing arrangement in the European multilevel system since the sovereign legislation and policy of the Member States nonetheless still have to test and respect the correspondence of their own national action with EU law.

The EU Member States are therefore sovereign and themselves responsible for the social and health policy, but only conditionally: they must in fact customise the development of their law and policy according to EU law (and to GATS: Lipson 2002). The necessity of accordance leaves room for manoeuvre as it must be defined and given specific form. To that extent this legal problem is by no means free of questions concerning power and balance of power in the multilevel system, nor is it free of political weighting of goods between the internal market dimension on the one hand and other esteemed historic, cultural and social characteristics of Europe and her Member States on the other. However, here again it must be stressed how precisely the internal market has become core process and motor of (intensifying but also expanded) European integration. In this context

3 For further discussion about the multilevel-governance approach please refer to Knodt and Hüttmann (2005) or classically Hoghe and Marks (2001).

"Brussels" is often accused of an antipathy towards federalism, a deep-seated cultural and political incomprehension of historically developed institutions and, in general, for the diversity of cultures of Europe – accused although the primary law of Europe explicitly takes account of these attributes and values the cultural diversity (see also Schulz-Nieswandt 2006a).

2. The difficult role of the European Court of Justice (ECJ)

This adaptation and correspondence that has started with regard to gaps forming between the dynamics of the internal market on the one hand and the national legal situations and institutional arrangements on the other is now the reason why and how the ECJ an dispense only in the form of (contentious in the theory of democracy) creation of law: it must provide general answers as to how the gaps are to be filled. To that extent the ECJ has become the motor of development in many areas of law and, consequently, of life. That is contentious in jurisprudence and politically, but results from the development gap between the degree of economic integrations and other stages of integration in Europe in social, political and cultural respects and, in fact, with an only limited existing supranational political system of the EU. Since the national governments are naturally not willing or inclined to close the gaps, the closing is initiated at supranational level.

3. The process of Europeanisation of social services of general (economic) interests in the context of social policy[4]

Certain areas of an Europeanised social policy have therefore already come into being in the sense of a shared competence. Not all sub-areas can be mentioned or included here. This concerns:

- coordinating labour and social law,
- aspects of the European Structural Fund (especially the European Social Fund [ESF] and the European Regional Development Fund [ERDF]),
- the Open Method of Coordination (OMC: Umbach 2009) policy[5],

4 For a retrospective overview of developments as well as for the political and technical procedure adopted for progressing social policy in the European Union, refer to Threlfall (2007). For a broad overview about European Social Policy see Schulz-Nieswandt/Mann/Sauer (2010). It is apparent not only which far-reaching adaptation requirements result from the dynamics of the internal market, but also how fraught the evident abbreviation of the idea of European integration is for questions of economic space alone. Against this background questions arise regarding the diversity of social protection systems in Europe and their competition. The OMC plays a fundamental part here since, regarding the criteria of access opportunities, quality and sustainability. The search for better solutions, the process of "invited dutifulness", a mixture of bottom-up discursive elements and socialising top-down effects places the Member States under the pressure of the learning and benchmarking process and, insofar as slowly harmonising, triggers at least changed processes. The restructuring of the SG(E)Is, certainly on the basis of the recognition of a fundamentally socially-minded guarantor State, belongs in this framework to the core elements of the discussion of a "European Social Model".

5 E.g. Borrás and Jacobsson (2004) deliver an analytical framework for studying the impact of the OMC, while Büchs (2007) presents a more detailed analysis regarding design and evaluation process of the OMC.

- the redefinition of the manner of functioning (of the markets) of services of general (economic[6]) interest (GIS or SG[E]I), and
- the basic social rights of the Unions' citizens (in the framework of their general as well as their economic and political) basic rights (European Union Charter of Fundamental Rights, proclaimed at the European Council meeting in Nice, 2000 [7]; Schulz-Nieswandt et al. 2006a).[8]

These dimensions are interdependent. Examples: the citizen's freedom of movement as insured person in the role as patient requires coordination of social law; or: the basic rights of persons with handicaps to participate in the world of employment requires supporting activities, e.g., by the ESF. The redefinition of the provision of social services is closely linked to the question of the basic freedoms in the internal market that are practically already "adopted as constitutional law". Just like the objectives of the OMC, these new arrangements assume the increasingly market-driven and economically guided forms of provision of social services:

- the citizen's basic social right to free access to the social protection systems and to facilities and services,
- the quality should be guaranteed at high level (Schulz-Nieswandt/Maier-Rigaud 2010; Schulz-Nieswandt/Maier-Rigaud 2005; Schulz-Nieswandt/Maier-Rigaud 2007)[9],
- however, the services should also be offered at the lowest possible prices and efficiently (which accounts for the opening up of the market and economic guidance),
- and, finally, the social protection systems must be sustainable, that means financial viability and long term stability.[10]

Following we only discuss the problem of the GIS or SG(E)I, but we relate this interdependence to other dimensions of an increasingly Europeanised social and health policy (as shared competence in a multilevel system) in the examinations.

III. The recent dynamics of the SG(E)I

Person-specific services targeted at physical and mental aspects of the individual cannot simply be organised through markets:

6 Or even non-economic interest, which however remains controversial, since all offers are basically a market reference, that is, a situation of competition.

7 Probably the most modern catalogue of human and basic rights in the world.

8 Refer e.g. to Menéndez (2002).

9 But – and that is a general trend in Germany in most sectors – the development of quality standards and quality management is realised on a low level. In many cases the situation is to be characterised as a patchwork of very different, not evidence-based practices of quality management methods and instruments. The degree of bureaucracy is very high, the concepts are very often under-financed and not in line with international standards, the personal staff conducting quality management exhibits limited or wrong-defined professional competences etc. To sum up: We have the impression that quality management will neither be considered very seriously, nor will it get the importance which the process of modernisation along the international experiences necessitates.

10 The dependence on demography of social protection systems has become a theme of EU policy. Here too a Green Paper has been presented. This is generally in line with the EU Lisbon Strategy. Regarding the relations between labour market and social protection systems reference is made to the Employability Strategy and to the Flexicurity Strategy ("Workfare" instead of "Welfare").

- asymmetric distributions of information between providers and clients are the rule not the exception (Schulz-Nieswandt 2009a),
- the quality of the products/services is not easy to judge beforehand or afterwards,
- not all services can be judged comparably in repeat purchases, trust and confidence correspondingly play a constitutive role,
- corresponding contracts cannot be made completely specific.

As a rule, however, there are situations concerning provision estimated as having high social value, so that the goods are assured or guaranteed in their production, provision and access (so-called merit goods).

However, complete failure of the market does not happen, especially since non-market controls are likewise incomplete (state or policy failure, failure of administration, failure of third sector).

In the context of this finding of the basically only incomplete allocation solutions it may be said that EU policy therefore envisages the creation of regulated quasi-markets (Schulz-Nieswandt 2008; Schulz-Nieswandt/Mann 2009a). It concerns, where it does concern, opening up to competition "in" markets and opening up to competition "around" markets when it is a matter of "natural monopolies" here there can be only one (regional) provider. It further concerns approaches to competition solutions in the form of surrogates for competition.

The EU policy tends analogously to transfer the new forms of regulated markets in the core areas of economic welfare (transport, energy, postal services and telecommunications, waste and sewage management, and increasingly water in any case) to the sectors of provision of social and health services. In-house solutions (where the government, for instance the local authorities[11], provide the production themselves, i.e., in the form of public enterprises) are marginalised as possibilities with strict subordination to market solutions and economically steered assignments to private carriers and pushed to the edge or the background. The science of the public economy occasionally articulated clear criticism on this topic (GÖW 2007).[12]

In general an obligatory best-bidder competition is emphasised for the selection of private providers/suppliers of services. The corresponding rules and procedures for the provision of social services are accordingly affected via the transparent, discrimination-free route of opening of the market and the competitive selection of providers/suppliers. To that extent the national practice of service provision must comply with this European system of competition, (prohibition of) subsidy and award of contracts. Where contracting out is dispensed with the deed of assignment, it must not only be transparent in accordance with European law, it must also incorporate benchmark instruments. Other further instruments (such as market-oriented direct award of contract) are not further discussed here.

11 Reference is made here to the possibility of the local authority self-administration economy, anchored in constitutional law in Germany.

12 Also printed in English: GÖW (2007a)

In everyday life social and health services are thus increasingly treated in much the same way as services in the economic-technical goods area. The EU Commission has clearly promoted this analogy through the relevant Green Papers and White Papers as well as through announcements and consultation processes. The results of this regulation policy, the form of sector-specific or framework directives remain open. This counts especially for the question of how alignment with other relevant decrees and directives and how the whole theme will finally be anchored in primary law in which the SG(E)I is also evaluated with reference to constitutional law (cf. Art. 16 ECT in conjunction with 86, Section 2 ECT). The questions of (limited and certainly rather restrictively applicable) exemption and leeway rules therefore likewise remain unresolved.

The reason for this policy of market opening and control through competition can be seen in the existence of competitive tendering. Besides the social enterprises of the free welfare care, private, commercially oriented enterprises are also active in these sectors.[13] Since such a market reference exists in the production and operation of these social services the functional concept of enterprise becomes effective.

This is a matter, i.e., from the functional viewpoint in the eyes of the EU Commission and the ECJ, neither of the particularities of the carrier or legal form nor of the presence of cooperative forms of production. The dominance of the business-management objective in the context of a complex cooperative stakeholder philosophy and action and the analogous creation of laws by the ECJ does not play any fundamental role for the EU Commission. The whole debate around the social production function of the social economy ("added values" thesis[14]) and its insertion in a "Third Sector" (Schulz-Nieswandt 2008b; Schulz-Nieswandt 2009) between State, Market and primary networks (family and relations as well as friendship: see also Bettio 2004 in relation to gender aspects; also Schulz-Nieswandt et al. 2006) is barely adequately assimilated by the EU Commission, despite the consultations held and the discourses on the subject and despite the received expert scientific opinions (Huber, Maucher and Sak 2008).

In this connection the own development in the national implementation of a "new control" or the New Public Management does not, however, make it possible to be able to speak only of a purely exogenous modernisation in the rules and procedures of the production of (social) services of general (economic) interest. The problem is also "homemade" (Schulz-Nieswandt 2007).

13 This is strongly pronounced in the care sector according to the German Social Law Code XI. However in the hospital sector too there is competition between public, free (free-cooperative) and private carriers. Another paper of Schulz-Nieswandt (2010) is discussing the hypothesis of a double ideologeme: on the one hand the path into the principle of inhouse, connected with the legal exclusion of public deficit spending for public (municipal) hospitals, induced by the European law, and on the other hand the national dispositif of privatisation. This discursive situation is to understand as an radical challenge for the public (municipal) hospitals as player of the German tradition of "Daseinsvorsorge" (to guarantee the spatial health care infrastructure).

14 Reference is generally made to the production of "social capital" by free welfare care (see Schulz-Nieswandt, 2006b). Local effects of intensified social integration and social cohesion that also increase the individual's quality of life and contentment with life are connected with this. Economic theory speaks in a related sense of positive external effects. But even this perspective of a welfare-economic consideration does not lead in simplified manner to the replacement of market through State production but, possibly, only to forms of regulation of markets.

IV. The (not new[15]) emerging of the guarantor State

Looking at this interplay of European (and consequently supranational) and national modernisation impulses we must speak in general terms of a trend towards "welfare state contract management". Even in the light of the (social) trends towards adoption in EU constitutional law the sovereign Member State remains free in this respect concerning the setting of general-interest service objectives to guarantee the provision of access opportunities to social infrastructures of high societal significance (the guarantor State). However, the rules and procedures for the creation of the guarantor State services should be left up to market-driven providers within the limits of a delegation principle (Cox 2008 and Obermann 2007). Here the said forms of quasi market-opening or control of competition, even if no more than approaches to market solutions given the above-mentioned imperfections of market and non-market allocations, serve as comparison.[16]

The German model of service provision in the framework of the social law codes[17] closely approximates this European system through the prioritisation of free (free-cooperative) and private (for-profit) carriers[18], but the extent of the formation of regulated quasi-markets has not yet elaborated to the last detail in compliance with the (law of the) internal market. And this is where conflicts arise around narrowness or width in view of interpretation and incorporation of the necessary internal market harmonisations of national practices regarding the control of service provision markets on the social and health sector. This will be the theme for the years ahead. The EU Commission closely focuses on the aspect of "welfare-optimum" prices and interprets this (theoretical) concept to a large extent in the sense of lowest-possible prices, thus running the risk, however, of fading out or marginalising more complex, integrated price-quality parameters in the orientation towards competition.

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15 See Schulz-Nieswandt 2005-2005b. The reforms of the sectors of social services that will be undertaken in Germany can be reconciled with the logic and functional imperatives of the common market order. Germany has an old tradition of the state as an institution that delegates public responsibilities („Gewährleistungsstaat"). Only in some exceptional cases the state itself will be producing and delivering social services. This is a good precondition to increase the economic efficiency and need-oriented effectiveness in the provisioning systems of social services.

16 The corresponding principle is: seek the least-incomplete solution compared with other incomplete solutions of the problems of award of contract.

17 In light of Art. 2 of the Constitution (Grundgesetz), the §1 of the German social legislation (Sozialgesetzbuch I) holds a clear mission which is of fundamental relevance for the design of the SHSGI in Germany. The purpose of the social legislation is to create a system of social security which provides for social benefits and social services in order to make the development of human personality in the life-course possible. Therefore, free access to systems of social protection, social services and institutions is of great significance. Efficiency concerns are subordinate to this normative demand.

18 The German case is a multi-level authorisation regime. In general, the state delegates competencies to the self-administration of public bodies and associations under public law, which manages the actual benefit provision on a contractual basis. On this level, precise entrustments (as for example in the context of Altmark Trans ruling) or public procurement dominate. It is only on this level that major elements of the Monti package become relevant. Outsourcing plays a role on the same level, namely in the actions of the concrete benefit providers of the social economy. In the normal and regular case that the German state is not providing the services itself, public service obligations are part of the multi-level regime of delegation. The state as provider of services and institutions is an exception as for example in the case of long-term psychiatry (The debate about "in-house" entities concerns more the field of municipal institutions (kommunale Versorgungswirtschaft) in the sense of services of general economic interest according to Art. 16 and 86 (2) EC treaty).

In the socio-political perspective this constriction is grave because of relevant aspects and dimensions of the problem are neglected. Market solutions seem to be difficult, particularly in complex need situations, "bad risk" situations, of individual persons. We should perhaps think of a mix of chronic illness, assistance and care requirements and handicaps in the light of simultaneous network deficits, more particularly in the case of older and elderly persons. The situation may be different for simple risks. A more extensive socio-political discourse could be given here regarding the problems of the development and protection of suitable (e.g., transsectorally and multi-professionally integrated) care landscapes. The Commission, more familiar with the economic-technical core areas of general-interest services, seems (as an epistemic community: Maier-Rigaud 2010) to have little understanding of the social-spatial, social environment and district-specific issues of guaranteeing complex services in the sense of accessibility, reachability, availability and acceptance. However, it largely assumes only political market power interests of the social economy established by the State.

The special tax law status of non-profit-making enterprises is broadly held to distort competition. This crystallises the issues of zero-tax-discrimination recognition of the non-profit character of the EU foreign enterprises in connection with transborder activities. And also questions of zero-discrimination calls for tenders, awards and contract and allocation law. The discussion is not yet closed in this respect.[19]

In general the development of European law and policy largely blanks out the question of the transaction costs of the induced regulation system (for the creation and opening up of modes of provision close to the market). These welfare gains of an increasingly efficiency-driven market opening and steering through competition are offset by the costs of the necessary regulatory authorities and their regulatory practice. Here it might help to take a look at the telecommunications or energy markets. After all, even in the case of an extensively competition-based ordering of health care, for instance in the form of purchase models from suppliers and supply networks by single social insurance funds in competition[20], the idea is being entertained of leaving the supervision of the quality (and of the spatial provision situation[21]) to the regional regulatory authorities.

V. Some problems of adaptation of the German national health service

The transborder mobility of patients alone has required adaptations of the German health service, including hospitals and nursing (Schulz-Nieswandt/Maier-Rigaud 2009). With a greater degree of patient mobility problems could also arise in the current practice of ca-

19 Which, considering the need for strategic management in connection with the formation of reinvestment funds, actually makes welfare services increasingly problematic.

20 Individual instead of collective contracts.

21 This is a fundamental argument in Germany on account of the imposition under constitutional law of an "equivalence of life relations" in space. To that extent it was always a political affair to structure medical care in an integrated manner, aligned with available health care, with general town planning (settlement structures, etc).

pacity planning in the outpatient and ward admissions areas. Extra fiscal charges could also be imposed for health insurances. This is connected with the details of the practice of compensation in Germany. Transborder formations of contracts, on the other hand, should proceed discrimination-free as per European law.

Basically, the German traditions of professional licensing of panel doctors and the nature of investment promotion remain a controversial theme in the context of the federal Länder demand planning, in terms of both constitutional and European law. There are still unresolved (competition and contract award law-related) questions[22] regarding the licensing and franchise models that are effective here. Legal and political conflicts loom in respect to the weighting of goods, between basic liberties, rights of freedom of movement, national laws for the securing of financial sustainability and the freedom of the State as guarantor with regard to goods of general interest. But, even independent from dynamics of the retroactive European law, that was already a topic in Germany of the (not isolated) administration of justice by the Federal Social Court and the Federal Constitutional Court.

The pressure for adaptation of the German social and health service with regard to the European regulations in the areas of competition, subsidy and the law on contract awards will, however, only increase. Particular in view of health services a trend (promoted especially [but not only] in the integration arrangements under § 140a-d SGB V) can be recognised towards transition to an individual contract system, that is to say, to a selective "purchase" of providers and care structures through individual funds that are in competition with each other. The traditions of a professional licensing system and a corresponding planning for the setting up of practices on the outpatient side consequently break up. If it ever will come to a (long-considered but still controversial) abolition of the dual hospital financing in favour of a monistic system (financing of the operating and investment costs of hospitals "from the one hand" of the insurances), then the capacity planning would also (have to) be transferred to the individual funds. In the framework of such a "purchase model" the relevant internal market-centred European law would acquire greater significance for the German health and social services.

Hitherto the practice of solidarity financing (Schulz-Nieswandt 2006) has been assessed by the ECJ in the view of the funds not being economic enterprises. So they may, e.g., jointly establish fixed amounts for drugs and medicines, which under other circumstances would constitute an abuse of a position of dominance in the market and would have to be forbidden on the grounds of anti-trust law.

Nor is there any change to the current legal assessment of the non-commercial enterprise character of social insurance in the more recent reform[23], which provides for the creation of a health fund (initially) with uniform contribution rates and a change of the risk struc-

22 These are of a terminological and also a legal strategy nature.

23 I. e., the GKV-Wettbewerbsstärkungs-Gesetz (GKV-WSG). German policy switched from the traditional path of cost containment policy to structural reforms concerning the modes of organisation in the provision of social services. However, the public authority system in charge of deciding is complicated and the system of organisation is further complicated by the federal governance structure. See also Schulz-Nieswandt 2008a.

ture balance (RSB) between the funds. However[24], the German health service, in the wake of the national reform legislation, is moving more and more to the model of a "solidarist competition order", that will seriously increase the relevance of European competition, subsidy and contract award law. That does not concern the fact that the German system of public missions delegation to public-law corporations through State self-administration and the priority under social law of non-public providers (including the equal ranking of free [cooperative] and private carriers) in principle, but not in concretisation, was always oriented towards a public-private-partnership model in the sense of the guarantor State.

VI. Perspectives of an European social model?

It is again apparent not only which far-reaching adaptation requirements result from the dynamics of the internal market, but also how fraught the evident abbreviation of the idea of European integration is for questions of economic space alone. Against this background questions arise regarding the diversity of social protection systems in Europe (Pestieau 2006; Bambra 2008) and their competition (Arts/Gelissen 2002; Cerami 2006 with relation to the Central and Eastern Europe; Korpi 2003). The OMC plays a fundamental part here since, regarding the criteria of access opportunities, quality and sustainability. The search for better solutions, the process of "invited dutifulness", a mixture of bottom-up discursive elements and socialising top-down effects (Büchs 2007: 26) places the Member States under the pressure of the learning and benchmarking process and, insofar as slowly harmonising, triggers at least changed[25] processes. The restructuring of the SG(E)Is, certainly on the basis of the recognition of a fundamentally socially-minded guarantor State, belongs in this framework to the core elements of the discussion of a "European Social Model".[26] And Germany has good preconditions to realise the European idea of a social model of organisation. The German case shows the possibilty of providing social services by the tasks of social entitlement to use the supplies, to realise high quality standards and to realise the sustainability of the social systems.

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24 Since many years, the modalities of the governance of social benefits are in flux in all branches of German social policy. Especially the conditions for the provision of social benefits in terms of out-patient social services and in-patient facilities have changed. The logic of social security and social service provision is increasingly under the influence of an institutional design focussing on economic incentives. New (micro-)economic research (institutional economics and related theoretical streams, New Public Management) has also had sustained influence. In that respect, the German reform ambitions correspond to the EU-Commission's efforts of modernisation in the sector of services of general (economic) interest which leaves the provision of social services to quasi-markets. Social tasks are set in a teleological manner by politics, the implementation, however, is more and more realised by means of competition (tender, public appointment [Betrauungen] with benchmarks etc.) as well as by economic target agreements, quality management and results-oriented regulation. European law (ECJ legislation) as well as the initiatives of the EU-Commission (communications, green and white papers etc.) have partly triggered this trend. These exogenous impulses have, however, only intensified existing reform ambitions within Germany.

25 That may architectonically question the institutional identity as now known (self-image).

26 For the discussion about the European Social Model refer e.g. to Scharpf (2002), Alber (2006) or discussing one special view – that of an adult worker model – more precisely to Annesley (2007). Also Maydell et al. (2005).

Abstract

Frank Schulz-Nieswandt; Die Dynamik der europäischen Definitions-Politik von Gesundheits- und Sozialleistungen als Dienstleistungen von allgemeinem (wirtschaftlichem) Interesse

Binnenmarkt; Daseinsvorsorge, Dienstleistungen von allgemeinem (wirtschaftlichem) Interesse; Europäische Integration; Inhouse; Europäisches Sozialmodell

Der Druck seitens der EU-Kommission und des Europäischen Gerichtshofes, bedingt durch das Wettbewerbs-, Vergabe- und Beihilferecht des Binnenmarktprojektes und analog zur Entstehung von Quasi-Märkten in den ökonomischen Daseinsvorsorgesektoren, diese regulative Neudefinition der Dienstleistungsmärkte auch auf die sozialen und gesundheitsbezogenen Dienstleistungssektoren zu übertragen, nimmt zu. Zwar bleiben die letztendlichen Spillover-Effekte noch unklar; doch die Marktöffnung und die Wettbewerbssteuerung auf der Grundlage eines Gewährleistungsverständnisses prägen diese exogenen Reformimpulse im europäischen Mehr-Ebenen-System, korrespondieren jedoch auch zu den endogenen Reformtrends in Deutschland.

References

Alber, Jens (2006), The European Social Model and the United States, in: European Union Politics, vol. 7 (3), pp. 393-419.

Annesley, Claire (2007), Lisbon and social Europe: towards a European 'adult worker model' welfare system, in: Journal of European Social Policy, vol. 17 (3), pp. 195-205.

Arts, Wil and John Gelissen (2002), Three worlds of welfare capitalism or more?, in: Journal of European Social Policy, vol. 12 (2), pp. 137-158.

Bambra, Clare (2008), Cash Versus Services: „Worlds of Welfare" and the Decommodification of Cash Benefits and Health Care Services, in: Journal of Social Policy, vol. 34 (2), pp. 195-213.

Bettio, Francesca and Janneke Plantenga (2004), Comparing care regimes in Europe, in: Feminist Economics, vol. 10 (1), pp. 85-115.

Borrás, Susana and Kerstin Jacobsson (2004), The open method of co-ordination and new governance patterns in the EU, in: Journal of European Public Policy, vol. 11 (2), pp. 185-208.

Büchs, Milena (2007), New Governance in European Social Policy. The Open Method of Coordination, Houndmills–New York.

Cerami, Alfio (2006), Social Policy in Central and Eastern Europe. The Emergence of a New European Welfare Regime, Münster.

Cox, Helmut (2008), Public enterprises and service providers in institutional competition and undergoing structural change, in: Annals of Public and Cooperative Economics, vol. 79 (3+4), pp. 527-547.

GÖW (2007), Ausschreibung oder Direktvergabe öffentlicher Dienstleistungen – Plädoyer für ein Wahlrecht der Gebietskörperschaften. Stellungnahme des Wissenschaftlichen Beirates der Gesellschaft für öffentliche Wirtschaft, Berlin. Also printed in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, vol. 30, 2007, pp. 207-227.

GÖW (2007a), Tendering or Direct Awarding of Public Services – Plea for the Right to Choose for Territorial Authorities. On the Need for Legal Provisions on the In-house Concept in the European Union. Statement of the Scientific Council of the Gesellschaft für Öffentliche Wirtschaft, Berlin.

Hervey, Tamara K. (2008), The European Union's governance of health care and the welfare modernization agenda, in: Regulation & Governance, vol. 2 (1), pp. 103-120.

Huber, Manfred, Mathias Maucher und Barbara Sak (2008), Study on Social and Health Services of General Interest in the European Union. Final Synthesis report. Prepared for DG Employment, Social Affairs and Equal Opportunities. DG EMPL/E/4. VC/2006/0131.

Korpi, Walter (2003), Welfare-State Regress in Western Europe: Politics, Institutions, Globalization, and Europeanization, in: Annual Review of Sociology, vol. 63 (5), pp. 589-609.
Lipson, Debra (2002), GATs and health services. Implications for EU candidate countries, in: Eurohealth, vol. 8 (4), pp. 39-41.
Maier-Rigaud, Remi (2010), Global Pension Policies, Berlin.
Maydell, Bernd von et al. (eds.) (2005), Enabling Social Europe, Berlin.
Menéndez, Agustín José (2002), Chartering Europe: Legal Status and Policy Implications of the Charter of Fundamental Rights of the European Union, in: Journal of Common Market Studies, vol. 40 (3), pp. 471-490.
Obermann, Gabriel (2007), The role of the State as guarantor of public services: transactions costs issues and empirical evidence, in: Annals of Public and Cooperative Economics, vol. 78 (3), pp. 475-500.
Pestieau, Pierre (2006), The Welfare State in the European Union, Oxford.
Scharpf, Fritz W. (2002), The European Social Model: Coping with the Challenges of Diversity, in: Journal of Common Market Studies, vol. 40 (4), pp. 645-670.
Schulz-Nieswandt, Frank (2005), Daseinsvorsorge in der Europäischen Union, in: Die Zukunft der sozialen Dienste vor der Europäischen Herausforderung, ed. by Linzbach, Christoph et al., Baden-Baden, pp. 397-423.
Schulz-Nieswandt, Frank (2005a) Soziale Daseinsvorsorge im Lichte der neueren EU-Rechts- und EU-Politikentwicklungen, in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, vol. 28 (1), pp. 19-34.
Schulz-Nieswandt, Frank (2005b), Daseinsvorsorge und europäisches Wettbewerbsregime, in: Öffentliche Dienstleistungen zwischen Eigenerstellung und Wettbewerb, ed. by GÖW, Berlin, pp. 12-24.
Schulz-Nieswandt, Frank (2006), Chancengleichheit und Sozialstaat, in: Archiv für Theorie und Praxis der sozialen Arbeit, vol. 37 (4), pp. 4-18.
Schulz-Nieswandt, Frank (2006a), Die Sozialpolitik in der Europäischen Union (II). Trends im Rahmen der föderalistischen Organisation, in: Wohlstand durch Gerechtigkeit. Deutschland und die Schweiz im sozialpolitischen Vergleich, ed. by Carigiet, Erwin et al., Zürich, pp. 329-355.
Schulz-Nieswandt, Frank (2006b), Lebensweltliche Genese von Sozialkapital durch soziale Dienste im Kontext des europäischen Wettbewerbsregimes, in: Lebensweltökonomie in Zeiten wirtschaftlicher Globalisierung, ed. by Jochimsen, Maren A. and Ulrike Knobloch, Bielefeld, pp. 157-178.
Schulz-Nieswandt, Frank (2007), Behindertenhilfe im Wandel. Zwischen Europarecht, neuer Steuerung und Empowerment, Berlin.
Schulz-Nieswandt, Frank (2008): Neuere Literatur zum Wandel der Staatlichkeit, dargelegt im Bezugskreis der europarechtlichen Neu-Adjustierung der (insbesondere sozialen) Dienstleistungen von allgemeinem (wirtschaftlichen) Interesse, in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, vol. 31 (4), pp. 438-452.
Schulz-Nieswandt, Frank (2008a), Widerspruchsvolle und ambivalente Strukturwandlungen bei noch nicht völlig absehbarer Trendrichtung, in: Wirtschaftsdienst, vol. 88 (10), pp. 647-652.
Schulz-Nieswandt, Frank (2008b), Zur Morphologie des Dritten Sektors im Gefüge zwischen Staat, Markt und Familie. Ein Diskussionsbeitrag zur Ciriec-Studie „Die Sozialwirtschaft in der Europäischen Union“, in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, vol. 31 (3), pp. 323-336.
Schulz-Nieswandt, Frank (2009), Perspektiven der Sozialwirtschaft. Eine multidisziplinäre Deutung des normativ-rechtlich- ökonomischen Regimewechsels, in: Archiv für Wissenschaft und Praxis der sozialen Arbeit, vol. 40 (3), pp. 86-102.
Schulz-Nieswandt, Frank (2009a), Alterung und praktische Sozialpolitik. Reflexionen zur Analyserarchitektur und zum notwendigen Tiefenverständnis der gesellschaftlichen Grammatik, in: Nachrichtendienst des Deutschen Vereins für öffentliche und private Fürsorge, vol. 89 (11), pp. 470-477.
Schulz-Nieswandt, Frank (2010), Das doppelte Ideologem: Inhouse ohne Defizite oder privat? – Öffentliche (kommunale Krankenhäuser) als Akteure der Daseinsvorsorge im Kontext des europäischen Rechts und das nationale Privatisierungs-Dispositiv, in: Die zukünftige Rolle öffentlicher Krankenhäuser im Gesundheitswesen, ZögU-Beiheft 38, ed. by Kurscheid, Clarissa, Baden-Baden, pp. 93-102,
Schulz-Nieswandt, Frank and Remi Maier-Rigaud (2005), Dienstleistungen von allgemeinem Interesse, die Offene Methode der Koordinierung und die EU-Verfassung, in: Sozialer Fortschritt, vol. 54 (5/6), pp. 136-142.
Schulz-Nieswandt, Frank and Remi Maier-Rigaud (2007), Die OECD als sozialpolitischer Ideengeber? Eine Analyse der Wirkungen auf die EU im Kontext der Globalisierung, in: Globalisierung und Europäisches Sozialmodell, ed. by Linzbach, Christoph et al., Baden-Baden, pp. 399-421.
Schulz-Nieswandt, Frank and Remi Maier-Rigaud (2008), EU-Harmonisierung im Gesundheitswesen? Der Wandel der Umwelt der betrieblichen Organisationen im Gesundheitswesen, in: Gesundheitsbetriebslehre. Management von Gesundheitsunternehmen, ed. by Greiner, Wolfgang, J.-Matthias Graf von der Schulenburg and Christoph Vauth, Bern, pp. 515-533.
Schulz-Nieswandt, Frank and Remi Maier-Rigaud (2010), Gesundheits- und Verbraucherpolitik. In: Jahrbuch der Europäischen Integration 2009, ed. by Weidenfeld, Werner and Wolfgang Wessels, Baden-Baden, pp. 153-156.
Schulz-Nieswandt, Frank and Kristina Mann (2009), „Geteilte Kompetenz“ und in die Konvergenz in der Erstellungspraxis von Gesundheitsdienstleistungen – die Entwicklung im Europäischen Mehr-Ebenen-System, in: Die Krankenversicherung, vol. 61, pp. 39-43.

Schulz-Nieswandt, Frank and Kristina Mann (2009a), Zur Morphologie der Staatlichkeit im Wandel. Neuere Literatur zur Europäisierung im Mehr-Ebenen-System, zu den Gesundheits- und Sozialdienstleistungen (von allgemeinem [wirtschaftlichen] Interesse) und zur öffentlichen Daseinsvorsorge, in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, vol. 32 (2), pp. 183-202.

Schulz-Nieswandt, Frank et al. (2006), Care Regimes for the Elderly in South Eastern Europe in a European Comparative Perspective, in: Financing Health Care. A Dialogue between South Eastern Europe and Germany, ed. by Laaser, Ulrich and Ralf Radermacher, Lage, pp. 257-277.

Schulz-Nieswandt, Frank et al. (2006a), Die Genese des europäischen Sozialbürgers im Lichte der neueren EU-Rechtsentwicklungen, Münster.

Schulz-Nieswandt, Frank, Kristina Mann and Michael Sauer (2010), Europäische Sozialpolitik und Europäisierung der Gesundheits- und Sozialdienstleistungen – ein Abriß, in: Sozialer Fortschritt, vol. 59 (2).

Threlfall, Monica (2007), The Social Dimension of the European Union. Innovative Methods for Advancing Integration, in: Global Social Policy, vol. 7 (3), pp. 271-293.

Umbach, Gaby (2009), Intent and Reality of the European Employment Strategy. Europeanisation of National Employment Policies and Policy-Making?, Baden-Baden.