POLICY BRIEF AUGUST 2013

EUROPEAN CENTRE · EUROPÄISCHES ZENTRUM · CENTRE EUROPÉEN

Far from a common market:

Exploring the surprising paucity of German care home providers in Austria

Kai Leichsenring

Kai Leichsenring is Research Associate and Project Manager at the European Centre for Social Welfare Policy and Research, Vienna.

Keywords: Ageing, Austria, Care Home Provision, European Union

This Policy Brief reports on an exploration of German care home providers' experiences to move (or not to move) their activities to Austria in the context of EU regulations.

This Policy Brief is based on research that has received funding from the European Community's Seventh Framework Programme (2007-2013) under Grant Agreement No. 242058.

Evaluating care across borders
ECAB
European Union Cross Border Care Collaboration

Policy Briefs are a publication series providing a synthesis of topics of research and policy advice on which European Centre researchers have been working recently.

Series Editor is *Pieter Vanhuysse*, Deputy Director and Head of Research
vanhuysse@euro.centre.org

The common market and the new 'light regime for social services'

Long-term care (LTC) services and facilities are a specific part of what has been labelled 'Social Services of General Interest' (SSGI) and 'Services of General Economic Interest' (SGEI) in EU rules and regulations. While the regulation of the LTC sector as such remains under the responsibility of individual countries, Member States have also agreed upon 'a set of common objectives centred on access for all to financially sustainable, high-quality long-term care' (European Commission, 2013a: 4) and, of course, to apply 'the European Union rules on state aid, public procurement and the internal market' (European Commission, 2013b: 5). These include in particular the freedom of establishment and the freedom to provide services (Articles 49 and 56 TFEU), but also particular legal specifications that have emanated from case law,[1] consultations of stakeholders and communications from the Commission (e.g. European Commission, 2010). Nevertheless, Member States remained with 'a wide margin of discretion' when it comes to defining the public service tasks they want to put in place as 'the precise (…) services which form part of these tasks do not necessarily have to be specified' (European Commission, 2010: 42).

The countless details regarding when public authorities support, procure, outsource, control or fund social services triggered ample critique from Member States, social service providers and within the Commission. As a result of ensuing consultations,[2] a number of new regulations have contributed to determine 'a light regime for social services' in relation to State aid and public procurement of SSGI over the past few years (cf. European Commission, 2013b):

1 The most influential Court decision in this context was the 'Altmark judgment' (Case C-280/00 Altmark [2003] ECR I-7747), which stated that financing an SGEI is not State aid if it is meant to fund a well-identified task, if the financing conditions have been defined in a clear and transparent way, ensuring that it does not exceed the costs of the SGEI, and if the service is provided in a cost-efficient manner.

2 See http://ec.europa.eu/competition/state_aid/legislation/sgei_archive_en.html

- The 'Almunia package' contributed to clarifying basic concepts of SGEI as well as their funding in terms of 'public service compensation' and related rules, e.g that State aid for social services does not need to be notified if defined compatibility conditions apply. This package also included a new '*de minimis* Regulation' concerning State aid stipulating that SGEI compensation which amounts to less than €500,000 per undertaking over three fiscal years does not fall under State aid scrutiny, i.e. all funding of social services entrusted to any provider below the threshold will comply with EU State aid rules.
- Furthermore, a proposal of the Commission for new and simpler public procurement rules[3] is driven by the idea that Member States should enjoy a wide margin of discretion in the organisation of social services and the choice of providers, considering the importance of the cultural context and the sensitivity of social service provision. Therefore, public procurement rules for social services would only apply above a threshold of €500,000: 'Contracts below this threshold are presumed not to be of interest for providers based in other Member States *unless there are concrete indications of the contrary*. This implies that, below this threshold, in the absence of cross-border interest, the Directive would not apply. Nor would the Treaty principles, such as the transparency requirement and the obligation to treat economic operators equally without discrimination' (European Commission, 2013b: 22; italics by the author).

In spite of these simplifications, clarifications and improved guidance (European Commission, 2013c) there remain a number of open questions not only in individual Member States, but in particular in relation to the practice of public procurement and State aid concerning cross-border issues:

- How is the 'cultural context and the sensitivity of social service provision' interpreted in the practice of cross-border relationships, e.g. between countries with the same language and cultural background?
- What do 'transparency' and 'discrimination of economic operators' mean for providers of social services operating across borders, e.g. in managing care homes for older people?
- How do stakeholders experience the European and the different national regulatory framework conditions when operating care homes in two neighbouring countries?

This Policy Brief therefore reports on an inquiry about experiences of German care home providers to move (or not to move) their activities

3 See http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm

to Austria – a neighbouring country, where the same language is spoken and where a similar welfare regime can be found. It thus could be assumed that the 'cultural context' would play a marginal role and that there would be ample interest of German providers to enter the Austrian 'care market'. Particularly over the past decade the Austrian LTC sector has been significantly modernised and expanded. It thus offers opportunities for German organisations with the intention to grow also across national borders. Such intentions, one would further expect, would be facilitated by the EU internal market regulations that aim at removing protective national measures. Finally, it could be assumed that fierce competition and extensive regulations on quality assurance and public reporting in the German care home market represent an incentive to move to Austria where the regulatory framework is less strict and does not stipulate public reporting on quality. Surprisingly, however, only a handful of German provider organisations have thus far invested in, constructed or taken over care homes in Austria (see References: websites). And there are no Austrian groups at all that have moved to Germany.

To find out more about the reasons for this counterintuitive observation, an explorative study was carried out in the context of the EU FP7 project 'Evaluating Care Across Borders' (ECAB, Project No. 242058). As there is no specific literature about cross-border activities in LTC provision this study (Leichsenring et al., 2013) tried for the first time to find out more about the motivations, the experiences and the perspectives of relevant stakeholders by means of interviews with representatives of German holdings and their Austrian affiliations. Furthermore, Austrian public officials were contacted in those regions where German providers had been identified. The interviews were prepared by searching for relevant interview-partners via expert contacts and the Internet, and by a guideline for semi-structured interviews.

Differences and commonalities in regulatory frameworks related to long-term care

The exploratory study in the context of the EU FP7 project 'Evaluating Care Across Borders' (ECAB) was based on three interviews with relevant stakeholders in Austria.

Austria and Germany, though both federal states with constitutionally defined responsibilities of regional (state) governments for LTC, stroke two distinct paths in the governance of LTC services during the 1990s. The introduction of the German LTC Insurance (1995/96) established open market access for all LTC providers that complied with defined accreditation rules, while beneficiaries gained additional purchasing power (in cash or in kind) that allowed for greater choice between providers and types of support. Prices (daily rates) were henceforth negotiated between provider federations and regional branches of the LTC Insurance, while residents pay fees from their income and LTC benefits.

Before 1995, services and care homes in Germany had been provided mainly by non-profit and public providers. The extension of the market was accompanied by the emergence of new and additional private for-profit providers (Evers, 2011; Heinze et al., 2011) as well as new contractual agreements and extended regulations on standards and principles for quality and quality assurance. These include routine external quality inspections conducted by the Medical Board of the Health Insurers (MDK), the establishment of internal quality management systems and enhanced transparency of quality, e.g. by 'transparency criteria' that are assessed during inspections and made publicly available on a dedicated website (see Table 1). This triggered an ample discussion about quality and eventually increased the professionalisation in this sector.

The comprehensive, tax-funded Austrian LTC allowance scheme was introduced in 1993 with an indirect impact on the governance of social services. As the scheme blurred the traditional subsidiarity principle, it required a treaty between the regions and the federal state to alter constitutional inconsistencies – while LTC allowances were from then on financed from the federal budget, regional governments were required to ensure the quantitative and qualitative development of services based on 'Regional Needs and Development Plans'. Compared to Germany, it took some more years till the increased purchasing power of beneficiaries and the activation of regional governments in terms of social planning contributed to a constantly growing 'care market', including a rising number of care homes managed by private for-profit providers. However, the regulatory framework remained characterised by social planning, rather than by market-oriented reforms. This approach included a rather hesitant advance of quality assurance mechanisms, resulting only recently in the introduction of a voluntary 'National Quality Certificate'. Still, inspection and related enforcement measures remained undisclosed and at the discretion of regional governments (Table 1).

In particular the differences concerning internal quality management, intensive (yearly) inspection and the public reporting of quality put considerable burden upon management and staff in German care homes. However, this does not seem to trigger cross-border movement as, in general, management seems to be highly interested in quality management. This general interest has been expressed by 'bottom-up' initiatives and the voluntary introduction of quality management in Austria.

Table 1: Comparing Austrian and German regulatory frameworks in long-term care

Category	*Austria*	*Germany*
Market access	Authorisation according to regional 'Needs and Development Plans' (and good relations to local and regional administrations)	Establishing a 'provision contract' with the regulators (Region and regional branches of the LTC Insurance)
Funding	Reimbursement of the provider per place on a defined flat-rate basis by the regional government which, in turn, will invoice the resident (out-of-pocket contribution from pension and LTC allowance, excluding 'pocket-money'); subsidies for up to 40% of construction costs	Individual negotiations with regional/local LTC Insurance branches to establish daily rates, specific staffing rules etc. Individual contract with each resident who pays directly to the care home according to care needs, use of nursing aids etc.
Quality criteria	Regional care home Acts (staffing, care quality, hygiene, structural criteria); *Gesundheits- und Krankenpflege-Gesetz* (Act on health and nursing care); internal quality management (voluntary)	Guidelines of the Medical Board of the LTC Insurances (MDK); Agreement on transparency ("*Transparenzvereinbarung*"); internal quality management (compulsory)
Inspection	*Carinthia*: Once a year 0.5-1 day, short report with recommendations *Vorarlberg*: on demand and every 3 years by a commission that is nominated by the county administration (*Bezirksverwaltung*), consisting of a medical doctor, a nursing expert and an administrative officer	Since 2011: once a year (1-2 days); extensive report and rating
Quality management and public reporting	*Carinthia*: no compulsory quality management; yearly inspection of compliance with regional care home Act (structural requirements, staffing levels, hygiene, care quality); no public reporting *Vorarlberg*: no compulsory quality management; no public reporting *National level*: Voluntary adherence to National Quality Certificate (NQZ), an external audit of accredited internal quality management systems (E-Qalin, ISO9000ff., QAP+)	Compulsory quality management Since 2011: yearly (not announced) inspections according to the MDK guidelines and public reporting (website) of ratings

Strategies and experiences in cross-border movement of care home providers

This section will shed some light on the motivations, obstacles and explanations for tangible experiences in cross-border movements between Germany and Austria based on exploratory interviews with two German care home providers (*St. Anna Hilfe* and *ProCurand*) and one Austrian public official.

Market access by personal relationships

Personal relationships seem to be the only lever to overcome restrictive access mechanisms for new care home providers in Austria.

Back in 1998 the three public care homes run by the local government of Bregenz got into economic and management troubles. As a result of a personal connection with the Mayor the German *'Stiftung Liebenau'* was therefore invited to bring in its know-how and take over the city's public care homes. The new management consolidated the situation, carried out some investments and thus got access to the previously 'closed' Austrian market. Today, *'St. Anna Hilfe gGmbH'*[4] provides 11 care homes for older people in three Austrian regions (Vorarlberg, Upper Austria, Vienna) although the expansion to Austria had originally not been a strategic goal of *'Stiftung Liebenau'*. However, the geographical vicinity and personal relationships were at the origin of what was perceived as a new challenge by the foundation's board of directors.

This entry via personal relationships with local or regional politicians or other important stakeholders shows a remarkable pattern of market-entry that seems to persist across Austria. In general, access is regulated by political and administrative gate-keepers, namely regional 'Needs and Development Plans', rather than by open market access as in Germany. However, even if new residential structures would be necessary according to these plans, public tendering for care homes remains an almost unknown procedure in Austria. It is therefore not surprising that also *ProCurand*, a group that provides more than 2,500 places in care homes and service housing in 20 German cities, had entered the Austrian market via personal relationships. In this case, the care home *'Julienhöhe'* had been a client of the German *ProCurand* consultancy. This resulted in a management take-over in 2005 with the intention to further expand the group's activities in Austria. The following section might explain why this strategy was not followed-up and why also the expansion strategy of *St. Anna Hilfe* came to a halt after several years.

4 The 'gemeinnützige GmbH' is a specific type of a limited liability company ('non-profit Ltd.') by Austrian and German law, which stipulates specific tax advantages if the organisation produces goods or services of 'common welfare' and re-invests any profit in related activities.

Regional strategies to close the market?

Once in the market, *St. Anna Hilfe* had quickly been able to consolidate the performance of those care homes they had taken over – with the given cost structures and daily rates paid through the existing regulations "the opportunities for us were prodigious" *(K.M., CEO St. Anna Hilfe)*. From the perspective of the public administration and other local stakeholders, the market-entry of *St. Anna Hilfe* and their ensuing expansion were accompanied by other developments that intrigued the situation in the regional LTC market. The advancement of independent providers triggered the 'Federation of Municipalities in Vorarlberg' to found its own enterprise (*Benevit gGmbH*) to manage care homes in municipalities that intended to outsource: "This strategy … was definitely motivated by social policy strategies as a response to the aggressive acquisition strategy of private providers" *(P.H., Regional Government of Vorarlberg)*. The turmoil in the regional care market eventually resulted in new legal regulations, namely the 2002 Care Home Act for Vorarlberg with the concurrent definition of fixed prices according to residents' care levels. All providers (public or private) may since only invoice these defined prices, currently for instance an all-inclusive daily rate of €164 (excl. VAT) for a resident with heavy care needs.

Economic challenges

While the legal framework would allow anybody to build a care home, the economic feasibility is another pair of shoes.

The Care Home Act also stipulated that the establishment of care homes in Vorarlberg is based on a notification proceeding, rather than on an authorisation procedure: "As a consequence, to date, we have no legal means to enjoin anyone from constructing a care home, even if it would not comply with our regional 'Needs and Development Plan' (…) Any organisation or individual may invest into, construct and run a care home in Vorarlberg. Residents in such a care home would be supported as individual residents, provided that the care home management presents a structural and economic concept and adheres to the regional quality requirements" *(P.H., Regional Government of Vorarlberg)*.

However, the actual feasibility to construct and manage a care home is another pair of shoes. New investors would not be eligible to the regional subsidy of 40% on investments if they were not complying with the 'Needs and Developmental Plan'. In addition, they would have to face high construction costs, high ecology standards and relatively important structural standards prescribed by the regional government, e.g. only single rooms with at least 25 m^2 are allowed. As a consequence, over the past few years no provider has succeeded to construct care homes in Vorarlberg below about €150,000 per place. This amount is far above what investors are used to in Germany, where the construction costs are calculated with €60,000 to €80,000 per place in a care home.

An important difference between managing a care home in Germany and in Austria is that, in Austrian care homes, there are only a maximum of 10% of all residents who pay for all services out-of-pocket, while the vast majority's costs are co-funded by the regional government, which acts as a purchaser.[5] In Germany, each individual can be charged according to the services provided – with individual costs, for instance, for auxiliary material that, in Austria, is reimbursed directly by the health insurance. As a result, "in economic terms it is a different challenge in Austria (…) for instance, staff costs are higher in Austria also due to higher wage brackets (…) while in relation to staffing requirements we're better off in Austria" *(F.B., care home manager 'Julienhöhe')*.

Still, all in all it could be economically attractive for German providers to extend their activities to Austria as many risks are minimised. Furthermore, there is "more money in the system" *(K.M., CEO St. Anna Hilfe)*. For instance, tariffs are 20% higher in Vorarlberg than in Germany, with less defined staffing standards and almost no competition – occupancy rates are quite stable above 95%. These framework conditions are the same for all providers. German companies do not have any advantages. Given the difficulties in getting access the major economic challenge is therefore to manage without being able to take advantage of economies of scale. From a public authority's perspective it is important that no huge profits can be made in the context of Austrian SSGI: "In spite of the defined prices, a holding company with several care homes may be able to make some small profits, in particular by their usual practice to charge a 'management fee' of about 4 per cent of their turnover to finance overhead costs" *(P.H., Regional Government of Vorarlberg)*.

Regulatory frameworks call for adaptation

Once having settled in Austria, German provider organisations have experienced advantages and inconveniences at several levels concerning the legal and regulatory framework (Table 1). Without prior experiences in foreign countries, the transfer of German know-how turned out to be a major challenge for *ProCurand*. For instance, the care management software including care documentation could not be simply transferred to Austria where the 'Health and Nursing Care Act' (Gesundheits- und Krankenpflege-Gesetz) requires care planning which, for instance, is not included in the software as it is not necessary in Germany. Another

5 Residents who want to benefit from support by the regional social assistance, as they would not be able to pay for – in this case – about €5,000 per month, have to declare their income situation (including LTC allowance and assets) and contribute with their pension (excluded 20% pocket-money and 13th and 14th pension payments) and the LTC allowance (excluded €44.29 per month). For all residents who are not able to pay for full costs the public administration reimburses the care home directly.

"shock consisted in realising that in Austria there is a clearly defined collective agreement for care staff which stipulates regular pay rise and 14 wages per year, rather than yearly negotiations and twelve wages per year [as in Germany]. Working conditions and social security regulations are simply more generous in Austria" *(F.B., care home manager 'Julienhöhe')*.

Cultural and professional differences

Although Austria and Germany seem to be 'united' by their common language, cultural differences between the two countries are manifold. In particular, the diversity in political cultures was striking for German managers moving to Austria. In the beginning, both in Carinthia and Vorarlberg German managers were confronted with mistrust and reservation. This may sometimes even have economic consequences when, for instance, the then German care home manager was not informed about specific subsidies granted during that period (2005-2006) by the Carinthian government: "It makes a difference whether I have to pay normal interest rates of 4 per cent or loans with generous terms of 0.5 per cent subsidised by the regional administration" *(F.B., care home manager 'Julienhöhe')*.

The German management of Austrian care homes also attracted a number of German care professionals. Also in this case, some cultural differences had to be overcome: "The German colleagues working here in Carinthia got an excellent education and training, but they got a different culture. (…) People here do not understand why suddenly someone talks to them in plain German" *(F.B., care home manager 'Julienhöhe')*. In general, however, integrating German nurses is quite straightforward as qualifications are comparable and similar. This is more complex for German 'geriatric nurses' ('*Altenpfleger*') as this job profile does not exist in Austria. They are therefore employed in Austria as 'nursing auxiliaries' or under the new job profile 'specialised social carer in work with older people', which implies both a hierarchical and a financial downgrading (see Winkelmann, 2013).

Less quality assurance, inspection 'light' – and no public reporting

In the light of experiences made with public reporting in Germany, *Stiftung Liebenau* and *St. Anna Hilfe* had the advantage of being better prepared for external inspection and quality development. However, the external audit by the Medical Board of the Health Insurances (MDK) in Germany is much debated and managers are not convinced that it helps to provide real transparency – "What is inspected [in Germany] is your ability to deal with medical or nursing care and to document your procedures, rather than measuring quality of life and whether the right

songs are being sung with the residents" *(K.M., CEO St. Anna Hilfe)*. Still, knowledge about risk management, the development of indicators and respective exchange with the German colleagues from *Stiftung Liebenau* have certainly created a competitive advantage for *St. Anna* care homes.

The Austrian care home manager of *ProCurand's* 'Julienhöhe' has exchanged experiences concerning the German inspection system with German colleagues: "they complain a lot about the amount of time that is spent with documentation and inspection". This is in stark contrast to the Austrian practice, where inspectors check mainly structural criteria with internal guidelines, but do not publish their results. In Carinthia, inspection takes place once a year: "Inspection procedures in Austria have a more 'human touch' (…) one or two inspectors will visit for half a day and provide a report of two or three pages that you can discuss with them on the basis of mutual understanding" *(F.B., care home manager 'Julienhöhe')*. Similar perceptions have been made in Vorarlberg, where the regional authorities once invited two colleagues from the German MDK to check two of their care homes according to the German criteria and inspection procedures: "Their approach to assess processes and results is certainly more profound than our inspection, but in the end the inspection result is comparable: our care home above average was assessed above average also by the MDK, the other (small, old and very traditional) care home was assessed non-compliant due to the lack of documentation and the lack of up-to-date care processes" *(P.H., Regional Government of Vorarlberg)*.

However, the less laborious quality assurance procedures are not perceived as an incentive for German providers to move to Austria because "any investor will first of all look at his return on investment – and in the area of care homes the return on investment is not such to impress any private investor (…) The profit margins are quite small and, in particular, the instruments to influence these margins are very limited – staffing requirements are defined, staff has to be paid according to collective agreements, building regulations have to be followed" *(P.H., Regional Government of Vorarlberg)*.

The future of competition under Austrian 'market' conditions

It is quite obvious not only for German providers of care homes in Austria that more transparency and quality development will be needed to keep care homes 'in the market' as an alternative to home care and other types of assistance: "However, as almost all our places are purchased by the regional government, we have to accept all residents they

are allocating to us. This means that it does not make sense to undertake any advertising activity" *(F.B., care home manager 'Julienhöhe')*. The German proprietary company is therefore also hesitant to invest in the introduction of a quality management system, which would be a precondition to apply for the recently introduced voluntary National Quality Certificate (NQZ) that is based on an external audit (BMASK, 2012). It is doubtful whether it would represent a competitive advantage as competition in Austria is characterised by different parameters than in Germany: "We are facing an increasingly fierce competition: new care homes have been constructed with important subsidies in the local vicinity, the regional government is subsidising community care services and there are national subsidies for 24-hour care [provided by live-in carers from neighbouring low-wage countries]. (…) All this results in the unprecedented situation for Carinthia that we have empty beds in care homes" *(F.B., care home manager 'Julienhöhe')*.[6]

In general, competition based on quality and performance is scarcely developed across Austria, and for the public administration it remains doubtful whether more competition would be able to improve quality in LTC. Competition is likely to remain restricted to local markets and other types of providers, but there will be an increasing challenge in some areas with a high density of care homes and in regions where providers are competing for well-educated staff.

No plaintiff, no judge: Is the Austrian reality at odds with EU regulations?

EU regulations are interpreted in different ways across Member States, based on national policies and pathways that might block cross-border provision.

The outlined difficulties in terms of access, economic challenges and cultural differences explain quite impressively why German providers do not expand their activities across the German-Austrian border. The 'market' is open only in theoretical terms. In the light of EU regulations about the internal market this situation sounds at odds with the guarantee of free movement of goods, capital, services and people (cf. van de Gronden, 2013). In the context of debates about SSGI[7] Austrian and other national administrations have argued, however, that this sector needs to be regulated differently, and 'competitive tendering' would not be obligatory for care homes: "(…) the main argument of the regional government of Vorarlberg – and actually of all Austrian regulators – for not establishing tendering procedures in the area of social care (…) consists in stating

6 Indeed, the care home 'Julienhöhe' had to declare bankruptcy during the first months of 2013. The care home is still operational, negotiations about the continuation by a rescue company are ongoing.

7 http://ec.europa.eu/social/main.jsp?catId=794&langId=en; see also debates and comments at www.deutscher-verein.de

that it is not the care home that is subsidised, but the individual resident who is cared for (…) We are not purchasing 50 places in a care home, but we are supporting individual residents to get the care they need within this facility" *(P.H., Regional Government of Vorarlberg)*.

A different perspective is taken when a municipality decides to build a new care home as a public building promoter based on the regional 'Needs and Development Plan'. In this case, even under the new EU *de minimis* rule it will in most cases be compulsory to publish a call for tender, but specific types of 'public-private-partnerships' have surfaced here, too. Over the past few years, for instance, a private Austrian non-profit Ltd. that is both constructing and managing care homes has cooperated on several occasions with municipalities to build care homes according to the regional 'Needs and Development Plan'. They were therefore entitled to a subsidy of 40 per cent of the construction costs. However, no public tender was published based on the argument that only less than 40 per cent of the total investments were funded by State aid.

In spite of this fragile legal situation it is interesting to note that EU regulations have not really influenced regional policies in this sector over the past few years, apart from public tendering for architectural planning and construction of care homes: "Still, if a public tender for building a care home is published, it is usually already known who will then run the facility in order to ensure that the future provider's concept can be realised" *(P.H., Regional Government of Vorarlberg)*. For German providers, this situation is unfamiliar: "(They) would like to invest and/or to increase their activities in Austria, but they are blocked by the strict regulation of access" *(K.M., CEO St. Anna Hilfe)*.

Taking the latest developments in EU regulations into account, these tend to adapt to the reality of national and regional strategies concerning the governance of SSGI. For German or other foreign provider organisations that would like to invest in Austria, additional efforts would be necessary to change the situation of the 'closed market'. Related recommendations would comprise the following issues:

- To foster more 'objective' market access procedures by means of compulsory public tendering procedures: "Investing into a care home today, usually implies a financial plan – and risk – covering a period of 30-40 years, so policy-makers are well advised to look for a very trustworthy provider and/or manager of such an undertaking, i.e. one who is able to guarantee a decent organisation over a long period of time." *(K.M., CEO St. Anna gGmbH)*.

- To provide more transparency by facilitating a level playground and ensuring equal opportunities in a competitive environment: "This means equal access to information and subsidies, equal preconditions and quality control and equal payment of staff. As we are talking about public money, it would be important to ensure that nobody takes advantage of, for instance, paying lower wages and bagging the profits" *(F.B., care home manager 'Julienhöhe')*.
- To monitor the rise of 'sale and lease back' practices that have recently also been introduced in Austria.
- To balance internal market rules and local needs and characteristics: "It would be appalling if we had, for instance, providers from abroad bringing their own staff … perhaps even being paid according to their national regulations (…) in care there are some general standards, but this is useless if I do not understand the mentality of residents" *(F.B., care home manager 'Julienhöhe')*.

Conclusions

The fragile legal situation of SSGI warrants further debates about national strategies, transparency and the role of market mechanisms in this sector.

This Policy Brief has shown that the restricted market access in Austria has prevented German providers from expanding their activities there, even though the economic framework conditions and the geographic vicinity would represent positive incentives. The specific interpretation of internal market rules by Austrian regulators will certainly be subject to further debates in the future. But as of today Austria remains a *de facto* 'closed shop' for foreign investors due to its specific political economy and governance of social service planning and delivery. The common language and the cultural vicinity between Austria and Germany would suggest that it should be easier to run a business in both countries, but evidence has shown that regulatory differences in LTC legislations and idiosyncrasies of the political culture and practice in Austria require important efforts of adaptation even in this case of cross-border activities.

At first sight, the heavily regulated access to the 'care market' in Austria seems at odds with general rules of the internal market and other EU regulations. However, the virtual closure of the Austrian LTC market is not based on the explicit legal or formal exclusion of additional, foreign providers but on administrative practices and implicit procedures. So the situation is comparable to other Member States, where similar mechanisms are applied, and has not yet triggered any legal action. This is likely to be due to the generally low level of 'potential profitability' in the area of LTC under existing framework conditions, rather than to the lower level of quality regulations and the lack of public reporting mechanisms in Austria.

This Policy Brief has shown that with respect to both cross-border activities and public reporting on quality a range of political and regulatory dilemmas remain to be addressed. First, basic EU principles that underpin the common market continue to compete with national, regional and local characteristics, the interests of relevant stakeholders and citizens' expectations when it comes to the delivery of SSGI. Recent adaptations have certainly contributed to some clarification and simplification, but national pathways and welfare traditions and different ways to introduce New Public Management methods have contributed to further differentiation of regulatory frameworks. In Germany the open market was installed together with a series of measures to compensate for potential market failures (definition of quality criteria, compulsory quality management, intensified inspection, public reporting). Austria opted for a slightly different path. Given the peculiarity of the Austrian welfare mix, there are mainly public or non-profit organisations that deliver SSGI; the latter with a long tradition and affiliations to either the political parties or the churches. Their relations to the public authorities remain based on mutual trust and personal relationships, while contractual relationships have only slowly developed. All relevant stakeholders continue to develop strategies to keep the area of SSGI under control. For instance, they set up outsourced public enterprises or sustain that public tendering of care homes was not necessary for it is the individual resident who is subsidised, rather than the provider organisation.

Second, the difficulties to define and monitor quality standards in LTC beyond basic structural criteria continue to trigger various national approaches to quality assurance and regulations related to the information of (potential) clients and residents. While all Member States struggle with the definition of result-oriented quality standards in LTC (Hoffmann and Leichsenring, 2011; European Centre, 2010), also in this area national characteristics and approaches play an important role. For instance, the German LTC sector is regulated by the 'Medical Board of the Health Insurances', which defines quality of care from a sturdily medical perspective. This is in stark contrast to the much less regulated and hardly systematic inspection approach of regional regulators in Austria. Furthermore, in Austria the collocation of responsibilities for the definition of quality criteria and funding at one and the same level of government (regions) is boosting the genuine conflict between quality and costs – with the exception of some enlightened public officials and managers, any investment in quality improvement is perceived as an additional factor to impact on prices and hence public expenditure.

Third, these unresolved challenges also hamper real competition based on price and quality between different providers within and between national quasi-markets. Various factors within and between regions (capped prices, local wage-levels, various staffing levels etc.) determine whether individual organisations, once having got access, will be able to perform 'better' than others. Even the German system of public reporting is highly contested, and not only by provider organisations (Hasseler and Wolf-Ostermann, 2010). Nor is it able to specify a correlation between quality and prices. Also the Austrian approach with a voluntary 'National Quality Certificate' will hardly be able to do so. However, we have learned that such regulations will not be a feature neither to attract nor to further detain foreign provider organisations to move their activities across borders.

This situation calls for further endeavours on various political levels of governance also under the 'light regime for social services' in relation to State aid and public procurement of SSGI. In fact, more transparency is necessary beyond current reports on the state of SSGI (Huber et al., 2008; Polacek et al., 2011). This includes quality reporting and further elaboration of indicators used at national and regional levels with the aim to share methods and systemic incentives for quality development in the context of regional idiosyncrasies. In terms of social investment, this implies to improve working conditions and training of staff, also across borders and by integrating migrant care staff, to learn from each other and to attract workforce to the sector of LTC. Finally, the governance of quasi-markets needs further improvement by striking a balance between over- and under-regulation. The challenges include issues such as the avoidance of overcapacities, bankruptcies and related care home closures in the context of a mixed economy of care with private non-profit, commercial and public providers – also across European borders.

References

Bundesministerium für Arbeit, Soziales und Konsumentenschutz (BMASK) (2012) *Nationales Qualitätszertifikat für Alten- und Pflegeheime in Österreich*, available at: http://www.bmask.gv.at/site/Soziales/Seniorinnen_und_Senioren/Lebensqualitaet_und_Wuerde/Nationales_Qualitaetszertifikat_fuer_Alten_und_Pflegeheime_in_Oesterreich

European Centre for Social Welfare Policy and Research et al. (ed.) (2010) *Measuring Progress: Indicators for Care Homes*, Vienna *et al.*: European Centre for Social Welfare Policy and Research, City University London, E-Qalin Ltd., MDK, Stichting Vilans, TU Dortmund.

European Commission (2010) *Guide to the Application of the European Union Rules on State Aid, Public Procurement and the Internal Market to Services of General Economic Interest, and in particular to Social Services of General Interest,* Commission Staff Working Document, SEC(2010) 1545 final.

European Commission (2013a) *Long-term Care in Ageing Societies – Challenges and Policy Options.* Commission Staff Working Document, SWD(2013) 41 final.

European Commission (2013b) *3rd Biennial Report on Social Services of General Interest*, SWD(2013) 40 final.

European Commission (2013c) *Guide to the Application of the European Union Rules on State Aid, Public Procurement and the Internal Market to Services of General Economic Interest, and in particular to Social Services of General Interest*, SWD(2013) 53 final/2 – available at http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf

Hasseler, M. & K. Wolf-Ostermann (2010) *Wissenschaftliche Evaluation zur Beurteilung der Pflege-Transparenzvereinbarungen für den ambulanten (PTVA) und stationären (PTVS) Bereich*, http://www.pflegenoten.de/upload/Pflegenoten_Endbericht_Beirat_u__WB_2010_07_21_6961.pdf, accessed 11/12/2012.

Evers, A. (2011) 'Wohlfahrtsmix im Bereich Sozialer Dienste', pp. 265-283 in: A. Evers, R.G. Heinze & T. Olk (Hg.), *Handbuch Soziale Dienste*. Wiesbaden: VS-Verlag.

Heinze, R.G., Schneiders, K. & S. Grohs (2011) 'Social Entrepreneurship im deutschen Wohlfahrtsstaat – Hybride Organisationen zwischen Markt, Staat und Gemeinschaft', pp. 86-104 in: H. Hackenberg & S. Empter (Hg.), *Social Entrepreneurship - Social Business. Für die Gesellschaft unternehmen*. Wiesbaden: VS-Verlag.

Hoffmann, F. & K. Leichsenring (2011) *Quality Management by Result-oriented Indicators – Towards Benchmarking in Residential Care for Older People*. Vienna: European Centre (Policy Brief 1, June).

Huber, M., Maucher, M. & B. Sak (2008) *Study on Social and Health Services of General Interest in the European Union: Final Synthesis Report*. Brussels: DG Employment, Social Affairs and Equal Opportunities.

Leichsenring, K., Schmidt, A., Augustin, U. & D. Panteli (2013) 'German Organisations Providing Residential Care in Austria – About Political and Cultural Cleavages in a 'Closed Shop' ', pp. 13-30 in: European Centre for Social Welfare Policy and Research/Technical University Berlin (eds.), *Cross-Border Movements of Providers in Long-Term Care* (ECAB, Work Package 6, Activity 4). Vienna/Berlin: European Centre/TU Berlin (ECAB Report).

Polacek, R., McDaid, D., Fernandez, J., Matosevic, T., Penn, H., Korintus, M., Verheyde, M., Wynne, R., Cullen, K., Dolphin, C., Bauer, E., Czischke, D., Hegedus, J., Teller, N. & A. Pittini (2011) *Study on Social Services of General Interest. Final Report*. Brussels: European Commission Directorate General for Employment, Social Affairs and Inclusion – available at: http://eprints.lse.ac.uk/43342/

van de Gronden, J.W. (2013) 'Free Movement of Services and the Right of Establishment: Does EU Internal Market Law Transform the Provision of SSGI?', pp. 123-161 in: U. Neergaard, J.W. van de Gonden, E. Szyszczak and M. Krajewski (eds.), *Social Services of General Interest in the EU*. The Hague: Springer.

Winkelmann, J. (2013) 'German Care Professionals in Long-Term Care in Austria', pp. 31-56 in: European Centre for Social Welfare Policy and Research/Technical University Berlin (eds.), *Cross-Border Movements of Providers in Long-Term Care* (ECAB, Work Package 6, Activity 4). Vienna/Berlin: European Centre/TU Berlin (ECAB Report).

Websites

http://www.margarethenhof-gmbh.de/
http://www.immac.de
http://www.dussmann.com/de/tochterunternehmen/kursana/
http://www.procurand.de/
http://www.procurand.de/treffen-bei-villach-a/willkommen.html
http://www.stiftung-liebenau.de/index.php?id=2095
http://www.st.anna-hilfe.at/

About the European Centre for Social Welfare Policy and Research

The European Centre is a UN-affiliated intergovernmental organization concerned with all aspects of social welfare policy and research.

Core Functions

- An international centre of applied social science and comparative empirical research on social policy and welfare
- An information and knowledge centre providing social science-supported social policy intelligence through a think-net
- A platform initiating future-oriented public policy debates on social welfare issues within the UN-European Region

More information:
http://www.euro.centre.org

Research Focus

The European Centre provides expertise in the fields of welfare and social policy development in a broad sense – in particular in areas where multi-or interdisciplinary approaches, integrated policies and inter-sectoral action are called for.

European Centre expertise includes issues of demographic development, work and employment, incomes, poverty and social exclusion, social security, migration and social integration, human security, care, health and well-being through the provision of public goods and personal services. The focus is on the interplay of socio-economic developments with institutions, public policies, monetary transfers and in-kind benefits, population needs and the balance of rights and obligations.

European Centre Publications

- Book Series "Public Policy and Social Welfare" (Ashgate, Aldershot), in English
- Book Series "Wohlfahrtspolitik und Sozialforschung" (Campus Verlag, Frankfurt/New York), in German
- Other Book Publications, books or special reports published outside the above series, with a variety of established publishing houses and in various languages.
- "Occasional Reports", contain conference or expert meeting syntheses, reports resulting from projects, etc., in English / French / German
- "Policy Briefs", contain recent research and policy advice results
- The European Centre Newsletter, in English

European Centre
for Social Welfare
Policy and Research

Berggasse 17
A – 1090 Vienna

Tel: +43 / 1 / 319 45 05 - 0
Fax: +43 / 1 / 319 45 05 - 19
Email: ec@euro.centre.org

Geographical Domain

All governments of States that are members of the United Nations, in particular those of countries of the UN-European Region, are invited to participate in and contribute to the activities of the European Centre. This results in a geographical domain of potential Member Countries of more than 50 European nations as well as the United States of America, Canada and Israel.