

# Chapter 2

## The Organisation of Welfare

### 2.1 Introduction

As globalization has reminded us most forcefully, problems of territoriality and space are too important to be left exclusively to geographers. Anything that eases the spatial movement of ideas, goods and persons also accelerates the course of history—and causes political problems in the process. Since the state is a combination of territory, people and government, every increase in the effective utilization and mastery of spatial distances made possible by technological progress has an initially negative and destructive impact on established social order.<sup>1</sup>

In the context of globalisation, of trade liberalisation, state policies are forced to change to face the need to adapt to growing competition. The removal of barriers to trade has a direct effect on living standards and economic development. Globalisation increases dependency between countries and the search for allocative efficiency not only affects trade relations but social policies, requiring the state to adapt to constant changes and pressures.

‘The traditional welfare state is, in a sense predominantly a passive institution. It is only when an undesirable outcome has occurred, that the safety net is spread’.<sup>2</sup> The welfare state appeared in response to the social needs of citizens and has developed differently in different European states, corresponding to their diverse historical, socioeconomic conditions. The welfare state is constructed around the concept of citizenship: ‘welfare states are national states’.<sup>3</sup> T.H. Marshall distinguishes three elements of citizenship: a civil element composed of rights to ensure individual freedom, a political one providing the right to participate in the exercise of political power and a social one comprising the right to a modicum of economic welfare, social security and cultural heritage.<sup>4</sup> Being organized around the concept

---

<sup>1</sup> Rieger and Leibfried 2003, p. 6.

<sup>2</sup> Vandenbroucke 2002.

<sup>3</sup> Offe 2000, pp. 63–89.

<sup>4</sup> Marshall 1963, p. 74.

of citizenship, the rules organizing the welfare state come into conflict with European Union law.

The welfare state has suffered changes as a result of various pressures, such as globalization, the increased competition in the economy, the rapid growth of the population and population mobility. In Europe, the creation of the European Union has had a strong impact on the welfare state. Talking about the process of European integration, Leibfried<sup>5</sup> observes that it ‘has eroded both the sovereignty (the legal authority), and autonomy (de facto regulatory capacity) of Member States in social policy’. Social policy in Europe is described by Leibfried as a multi-tiered policy, less the result of the welfare building ambitions of Eurocrats and more the result of the spill-over effect from the single market.

‘Social harmonization was seen as an end product of economic harmonization rather than a prerequisite’.<sup>6</sup> This explains the lack of social policy objectives in the EEC Treaty. The EEC Treaty contained in its objectives the raising of standards of living (Article 2 EEC), the existence of a social fund (Article 3) and the promotion of cooperation in the social field (Article 118). Hantrais notes that there was a failure to agree on objectives but mechanisms were set up to achieve certain social goals. There were provisions on equal pay, the improvement of standards of living and social harmonization using Article 101 EEC (now Article 116 TFEU) as a legal basis insofar as they supported economic integration. There were also directives or measures intended to deal with the problems raised by the provisions on the free movement of workers, services and capital, and the freedom of establishment. There were different measures regarding the social security entitlements for mobile workers, and provisions for the recognition of qualifications.

The main impact on welfare states came, however, from negative integration. A Member State may not limit social benefits to its own citizens, it may not restrict the benefits and rights to its territory, it may not prevent other social policy regimes from directly competing on its territory and it cannot have exclusive rights to decide on claims for welfare benefits made by migrants.<sup>7</sup>

Leibfried points out that this complex process where the supranational efforts aim at extending the access to welfare and the national efforts aim at maintaining control has led to the creation of a hitherto unknown system.<sup>8</sup>

‘Neither “supranationalization” nor “harmonization” seems an appropriate label for this dynamic, since each implies more policy control at the centre than currently exists. This process is more like a market-place of “coordination”, with the ECJ acting as market police, a light and visible, but far-reaching hand,

---

<sup>5</sup> Leibfried 2005.

<sup>6</sup> Hantrais 2000, p. 1.

<sup>7</sup> Leibfried 2005, p. 264.

<sup>8</sup> Ibid.

reshaping the boundaries of national autonomy.<sup>9</sup> According to Weiler, the Court is the policy making centre.<sup>10</sup>

The application of European Union law has had different impacts depending on the welfare system at issue. Different systems have been subjected more or less intensely to the application of European Union law. Moreover, under the impact of negative harmonization, welfare systems have endured modifications to various aspects, which have actually led to convergence between the different systems. While in the past the different welfare systems were confined to national territory and developed according to the socioeconomic and political factors existing in their respective Member States, today, the creation of the internal market exercises the same type of pressure on the diverse welfare systems. The existence of similar conditions influencing welfare states leads to the convergence of these systems. The reform of the welfare state is an ongoing process with unpredictable results.

Since the aim of this book is to study the impact of European Union law on welfare systems, it is important to introduce a few concepts related to welfare. The aim of this chapter is to define welfare for the purpose of this book and to provide an overview of the diversity of welfare systems in Europe and some of their features. This description will make subsequent chapters easier to understand and permit later reference.

## 2.2 The Meaning and Origin of Welfare States

In order to assess the impact that the internal market has on the functions of the welfare state, this section is aimed at first explaining the meaning and origin of the welfare state. By trying to provide a definition and considering the historical development of the welfare state, the conflict between the welfare state and the internal market becomes obvious. The establishment of the internal market, ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’<sup>11</sup> requires the removal of all obstacles to trade which can hinder ‘directly, indirectly, actually or potentially intra-Community trade’.<sup>12</sup> The broad interpretation of what can constitute an obstacle to free movement leads to the extension of European Union competence and consequently to an assessment of whether national rules comply with European Union law. The application of Treaty rules extends to sensitive areas over which Member States wish to retain total control. If the welfare provisions fall within the scope of the Treaty then, consequently, Member States have to comply with Treaty rules, thus losing their power to decide as sovereigns the organization of welfare.

---

<sup>9</sup> Ibid.

<sup>10</sup> On the role of the Court see: Weiler 1994, pp. 510–534; Weiler 1999; Burley and Mattli 1993, pp. 41–76; Stone Sweet and Caporaso 1998, pp. 92–133; Shapiro and Stone 1994, pp. 397–420; Barnard 2000, pp. 49–69; O’Leary 2002; Chalmers 2004.

<sup>11</sup> Art. 14 EC Treaty.

<sup>12</sup> Case 8–74 *Dassonville* (*Procureur du roi v. Benoit and Gustave Dassonville*) (1974) ECR 837.

‘A common textbook definition (of the welfare state) is that it involves state responsibility for securing some basic modicum of welfare for its citizens’.<sup>13</sup> The term citizenship carries with it the idea that welfare was confined within the national borders.

According to Robert Goodin and Deborah Mitchell, the welfare state is characterized by systematic social concern for the welfare of people who might otherwise lack the basic necessities required for their effective functioning within the community.<sup>14</sup> The welfare state is concerned with people’s wellbeing. For some, the growth of the welfare state was a normal reaction to the hardships of early industrialization. The origins of welfare states seem to lie in the societal changes associated with the broad process of industrialization and, particularly with the breakdown of traditional forms of social provision and family life.<sup>15</sup>

Dealing with the foundations of welfare, Goodin and Mitchell present the evolution of the welfare state. Each society faces social problems: there are people who need assistance. Initially, individuals were the ones who provided for their own welfare, or the family ensured it. For those who could neither support themselves nor had a family to support them, the task of offering them social protection was entrusted to the church and later to the state.

Church and state activity traditionally occurred at a very local level, but as workers became mobile, the problem of to whom the poor belonged appeared. In England the Elizabethan Poor Law of 1601 solved the issue by requiring the poor to settle in a particular parish as a condition for receiving poor relief. This was a restriction to labour mobility.<sup>16</sup>

The fact that welfare is distributed on a national basis is exemplified by the appearance of the first mutual insurance schemes protecting workers against the risks of losing their jobs. Initially, they were created at the workers’ initiative and were organized voluntarily. Since this created problems, mutual insurance was made compulsory at a national level. Furthermore, since this only applied to workers, and non-workers were not entitled to benefit, the next step was to universalize benefits, ‘making them contingent merely upon membership in the community rather than upon a history of workplace contributions’.<sup>17</sup>

Welfare states appeared out of the need to ensure protection to special categories of people. Since this requires the expenditure of treasury money, the distribution of welfare states is confined within the boundaries of the national territory. Each country developed a welfare programme to offer protection to those affected by the economic conditions in that country. They created intricate systems for the collection and distribution of welfare benefits, based on national criteria and intended to meet the problems that appeared as a consequence of economic

---

<sup>13</sup> Esping-Andersen 2000, p. 154.

<sup>14</sup> Goodin and Mitchell 2000.

<sup>15</sup> Pierson 1998.

<sup>16</sup> Goodin and Mitchell 2000.

<sup>17</sup> *Ibid.*, XII.

evolution in that country. The provision of social insurance is increasingly seen as part of the rights and duties which bind the state and the citizenry. Receiving welfare becomes a benefit of citizenship.

This national criterion for the distribution of welfare benefits conflicts with European Union policy regarding free movement, where states are not allowed to discriminate on grounds of nationality. Considering welfare benefits as social benefits, which European Union legislation and the ECJ's practice make available to all with the status of worker, leads to an EC involvement in the state's social policy. States with a high level of social protection face an increasing financial burden, since they have to make benefits available on a non-discriminatory basis. Each state 'seeks to avoid becoming a welfare magnet attracting neighbouring states' poor'.<sup>18</sup> Will this lead to a race to the bottom, the states decreasing their level of social protection as their systems become increasingly burdened by this European Union policy? Moreover, welfare states cost money, which implies higher taxes in the states with more generous welfare services, which in turn is a disincentive for investment or for establishment. Therefore, on the one hand, the expenditure of a generous state increases while on the other hand, its funding decreases as companies are less likely to establish in a high tax environment.

According to Goodin and Mitchell the role of supranational bodies is to ameliorate the effects of international capital, to respond to the demands of economic globalization. It is well known that competition brings welfare as it tends towards allocative efficiency, as it is well known that states created intricate systems for the distribution of welfare; but in the context of globalization, of opening frontiers, things have become more complicated.

Welfare states appeared as a result of the need to ameliorate the negative effects of economic development, but the welfare apparatus increased to such an extent that it became a financial burden on those who contribute to the financing of welfare. It is a vicious circle: the welfare state requires funding—the higher the social protection, the higher taxes will be—the higher the taxes, the less the interest in inward investment, as firms will look for the most appropriate environment for their business—the fewer firms there are in the country, the less money returning to social system, thus, less money to provide welfare services. Consequently, the country risks not only that it places its companies at a competitive disadvantage, thus losing economically, but also risks being forced to reduce its welfare services, as a result of lack of funding. This is one of the dangers that the welfare state faces today.

In order to better understand the functioning of the welfare state it is important to know why welfare is provided by the state in the first place. There have been numerous studies regarding the welfare state and different theories have been offered.

According to Adam Smith,<sup>19</sup> the general welfare of society is but the sum of the welfare of the individuals within it: therefore, social welfare would be best secured

---

<sup>18</sup> *Ibid.*, XIV.

<sup>19</sup> Pierson 1998, p. 9.

by maximizing the sum of individual welfare. Consequently, there is the need for a competitive market economy in which production is directed solely by the laws of supply and demand and individuals pursue their economic interests.

But a competitive market economy cannot only have winners. There are categories of people that need special protection and the mechanisms of the market cannot meet these needs. Because the market mechanisms may fail to provide welfare services optimally, state intervention is required.

The state became responsible for those who could not look after themselves and needed assistance: orphans, the elderly, widows and disabled people. They are the recipients of the social assistance offered by the state from its revenues collected from taxation. The aim of social assistance is often to provide the minimum level of subsistence. Furthermore, the state became responsible for social insurance as a result of the workers' failure to create a viable framework for their mutual insurance schemes. Their intention to cover the risks of the inability to work caused either by old age or by other factors were meritorious, but unfortunately, these schemes' voluntary character proved insufficient. Some people decide not to insure, and people who run lower than average risks have every incentive to opt out of a scheme, making the premiums exorbitantly expensive for those who remain. Moreover, in times where everyone does badly, mutual insurance schemes collapse.<sup>20</sup> Therefore, state intervention was imperative for the proper functioning of the insurance schemes. Through legislation, schemes were made compulsory, thus offering protection from negative eventualities.

The state is responsible for providing social services. As economic welfare increased, the state could afford to develop different programmes to increase its citizens' standard of living. Health and education were the basic services guaranteed by the state due to their vital importance—health concerning access to medical care, on account of the seriousness of disease; education concerning the education of children, preparing them for the future. Water, energy, postal services, railways, telecommunications also became state responsibilities.

### 2.3 Different Welfare Regimes

This section describes the different ways in which welfare states have been classified. The aim is to introduce ideas and terminology, rather than to choose between the classifications. Each adds some explanatory power in its own way, and is thus helpful in understanding the effects of the EU law on national welfare systems.

[...] in the context of European history, the growth of the modern welfare state can be understood as a response to two fundamental developments: the formation of national states and their transformation into mass democracies after the French Revolution, and the growth of capitalism that became the dominant mode of production after the Industrial Revolution.<sup>21</sup>

---

<sup>20</sup> Goodin and Mitchell 2000.

<sup>21</sup> Flora and Heidenheimer 1982, p. 22.

The welfare state is linked to the emergence of the mass democracies. Some interpret the welfare state as an answer to the demands for socioeconomic equality.<sup>22</sup> However, the welfare state brought ‘the transformation of the state itself, of its structure, functions, and legitimacy’.<sup>23</sup> According to Marxist tradition, the welfare state is seen as an attempt to address the problems of capitalism. Flora and Heidenheimer note that the political sociological perspective of de Tocqueville and Weber, which considers that the welfare state emerged as a result of the growing mass democracies, and the political economy perspective of Marx and others, which holds that the welfare state emerged as a result of the expanding of capitalism, do not contradict and are in fact complementary. They conclude that the welfare state seems to be more a ‘general phenomenon of modernization’.<sup>24</sup>

There are two approaches to explain the welfare state: a structuralist approach and an institutional approach.

According to the structuralist approach, the welfare state was made possible and necessary by industrial society because the old means of social protection, such as the family, the church and the guilds were destroyed by ‘forces attached to modernization, such as mobility, urbanization, individualism and the market dependence.[...] Hence, the ‘welfare function’ is appropriated by the nation-state’.<sup>25</sup>

The delay between the destruction of the traditional social institutions and the emergence of the welfare state is explained by the fact that welfare requires a certain level of economic development which allows a surplus to be redistributed.<sup>26</sup>

Following the institutional approach, according to Polanyi, social policy is a precondition for the reintegration of the social economy.<sup>27</sup> Democracy is considered as playing an important role in the emergence of the welfare state. It is considered that the extension of full citizenship also includes social rights, or that the important role of the voter triggers the increase in public expenditure.<sup>28</sup>

The welfare state developed differently depending on different factors.

Titmuss<sup>29</sup> distinguishes three models of welfare: the residual model, where the state has a marginal role and intervenes only when the family and the market have failed to do so; the industrial-achievement-performance model where ‘social needs were met on the basis of merit, work performance and productivity’;<sup>30</sup> and the

---

<sup>22</sup> Marshall 1963.

<sup>23</sup> Flora and Heidenheimer 1982, p. 23.

<sup>24</sup> *Ibid.*, 23.

<sup>25</sup> Esping-Andersen 1990, p. 13.

<sup>26</sup> *Ibid.*, 4.

<sup>27</sup> *Ibid.*, 15.

<sup>28</sup> *Ibid.*, 15.

<sup>29</sup> Titmuss 1974.

<sup>30</sup> Hantrais 2000, p. 30.

institutional redistributive model where the welfare institutions provide universal cover.

In order to ameliorate the negative effects of economic development, countries have created social systems of welfare transfer based on three principles: need, universalism and reciprocity. Jochen Clasen and Wim van Oorschot identified three types of state response to social contingencies.<sup>31</sup> The first type of response aims at poverty relief and regards need as arising only from the moment that a minimal level of subsistence is not met. Resources are redistributed to the worst off. A second type of response, aimed at the preservation of living standards, sees need as arising when an achieved standard of living is threatened. It redistributes resources to those who are regarded as being in need on grounds of the equity principle: those who have achieved more, are given more, so that initial status (or income) differences are reproduced. The third type of response aims at general wellbeing. The resources are distributed on the principle of equality, since all citizens are viewed as having a right to a common standard of wellbeing.<sup>32</sup>

The state is no longer only a public order provider, but together with economic development it has become a provider of social security, social insurance and a provider of services.

The State is regarded as a welfare provider who uses its organized powers in order to ‘modify market forces in at least three directions—first, by guaranteeing individuals and families a minimum income irrespective of the market value of their work or their property; second, by narrowing the extent of insecurity by enabling individuals and families to meet certain “social contingencies” (for example, sickness, old age and unemployment) which lead otherwise to individual and family crises; and third, by ensuring that all citizens without distinction of status or class are offered the best standards available in relation to a certain agreed range of social services’.<sup>33</sup> The State traditionally provides social assistance, social security and access to essential services. The provision of these services is achieved under different arrangements, depending on the type of welfare regime.

According to Esping-Andersen there are three regimes of welfare state. One type of welfare regime is the ‘liberal’ welfare state with ‘means tested assistance, modest universal transfers, or modest insurance plans’.<sup>34</sup> Under this type of system, the benefits are modest and entitlement is restricted to those with low incomes. The state encourages the market ‘either passively—by guaranteeing only a minimum—or actively—by subsidizing private welfare schemes’.<sup>35</sup> The United States, Canada and Australia are examples of countries with this welfare state model.

---

<sup>31</sup> Clasen and Van Oorschot 2002, pp. 89–115.

<sup>32</sup> Ibid.

<sup>33</sup> Briggs 2000.

<sup>34</sup> Esping-Andersen 1990, p. 26.

<sup>35</sup> Ibid., 27.

Another type of welfare state regime according to Esping-Andersen is the ‘corporatist’ welfare state. The state can displace the market in the provision of welfare, with private insurance playing a marginal role. Austria, France, Germany and Italy maintain such regimes.

The third type of welfare is the ‘social-democratic’ regime. ‘Rather than tolerate a dualism between the state and market, between working and middle class, the social democrats pursued a welfare state that would promote an equality of the highest standards, not an equality of minimal needs as was pursued elsewhere’.<sup>36</sup> Instead of waiting until a family’s resources are exhausted it complements them. This type of welfare state takes direct responsibility in caring for children, the aged and the helpless. The Scandinavian countries have a social democratic regime.<sup>37</sup>

The essential criteria used for such a classification are related to the ‘quality of social rights, social stratification, and the relationship between state, market and family’.<sup>38</sup>

Greece, Portugal and Spain were not included in Esping-Andersen’s analysis and some authors consider that this was done because, since they relied on social insurance, they were expected to develop in the line with the continental model.<sup>39</sup>

Leibfried identifies four social policy regimes: the Scandinavian welfare states, the ‘Bismark’ countries, the Anglo-Saxon countries and the ‘Latin rim’ countries.<sup>40</sup>

The welfare systems of the founding members of the European Union displayed similarities because their systems were based on corporatist models. This ‘continental’ model, following the Bismarckian model, was based on the presumption that entitlement to benefits was granted as a result of participation in work. There was no solidarity between the members of society since there was no concern with redistribution from one sector to another. Initially, this model was introduced in Germany by Bismarck in old-age pensions and compensation was calculated according to earnings, without having a minimum income.<sup>41</sup>

Provision for health was also based on insurance contributions, though Italy adopted a national health service.<sup>42</sup>

Even if they shared the same principles, the arrangements existing in these countries were different. The state was involved to different degrees in the provision of welfare.

The United Kingdom and Scandinavian countries that acceded later, had different types of welfare models, the citizenship model or the social-democratic model inspired by the Beveridge model. The entitlement to welfare benefits was on the basis of citizenship. The collection of the required resources was achieved through taxation and benefits were distributed to all citizens on equal terms, in

---

<sup>36</sup> *Ibid.*, 27.

<sup>37</sup> *Ibid.*, 28.

<sup>38</sup> *Ibid.*, 29.

<sup>39</sup> See Hantrais 2000, p. 31.

<sup>40</sup> Leibfried 1993.

<sup>41</sup> Hantrais 2000, p. 35.

<sup>42</sup> *Ibid.*

contrast to the continental model, where the collection of resources was by contribution and distribution was according to income, not on equal terms.

Greece, Spain and Portugal were characterized by a corporatist regime, though their health systems were national health systems funded through taxation.<sup>43</sup>

The Central and Eastern European countries, though possessing a tradition of state monopoly of welfare services, are moving towards corporatist regimes, where workfare is preferred to welfare.<sup>44</sup>

These classifications are made taking several criteria into consideration, such as the means of funding, the distribution of welfare, the benefits people are entitled to and the population groups covered. The various methods of organizing welfare systems are due to the different historical, social, economical and political developments experienced.

There are different standards of social protection which also depend on the economic development of a country.

It is interesting to note that all these welfare regimes, with all their diverse historical development, are now faced with similar problems. This leads to increasing resemblance between the systems and consequently to convergence. The increasing expenditure required by welfare determined Member States to adopt different solutions to cutting expenditure, one of which was to entrust the provision of some welfare services to private parties, hoping that better efficiency would be achieved. The provision of welfare is ever more a mix between public and private providers. In the United Kingdom for example, 'schemes for earnings-related payments and occupationally-based pensions and private health care had progressively been extended to other sectors of the working population'.<sup>45</sup>

According to Titmuss, social security and social service programmes are exposed to change because of their concern with the insecurities of industrialism.<sup>46</sup> In addition to the normal questions Titmuss addresses—on the direction of change, on to whether systems should be less universalistic and more concentrated on poverty, handicap or old age—another dimension concerning who to include in these programmes has to be considered: the Community dimension.

Though there is a distinction between these three types of regimes, no regime is pure, each rather being able to incorporate elements from the others.

## 2.4 Bismarckian versus Beveridgian Health Systems

It has been seen so far that there are different welfare regimes where the entitlement to social benefits varies. In the field of health, one component of social policy, can distinguish different characteristics according to the type of welfare regime.

---

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., 37.

<sup>45</sup> Ibid., 38.

<sup>46</sup> Titmuss 1976, p. 60.

Health services should be available to everyone, of good quality and at an accessible price. Access to healthcare must be guaranteed, which is why in the organisation of healthcare systems, solidarity constitutes an important element. Healthcare is one service that cannot be left to be provided entirely by the market. A system meant to ensure solidarity between healthy and sick people is necessary in order to guarantee that everybody has access to healthcare. The provision of a health service does not limit itself to services provided by doctors but also requires extensive and expensive infrastructure. The proper organisation of the financing of the system is therefore required.

The provision of healthcare can be achieved by public entities or by private entities, or by a mix of public–private undertakings. Under these circumstances, it is important to ensure that, when the provision of health is entrusted to private entities, some compensatory mechanisms are introduced in order to guarantee solidarity and to maintain the financial viability and fair competition between different funds. A rigorous planning of the costs and expenses is absolutely necessary.

Two important systems emerged, distinguished by the nature of the relationship between public intervention and the market. The Bismarckian system goes back to the reforms of Bismarck in 1880s, when he introduced the Health Insurance Act—setting the basis for compulsory sickness insurance—the Old Age and Disability Act and the Accident Insurance Act. The other system is the Beveridgian system, which dates back to 1911 when Winston Churchill and Lloyd George, assisted by William Beveridge, prepared the Liberal government’s National Insurance Act.<sup>47</sup>

The health insurance program introduced by Chancellor Bismarck was aimed at providing healthcare for German workers. It aimed to cover those who participated in a professional group, organisation, industry or firm.<sup>48</sup> Inactive people were protected through complementary schemes. The cost of the health service was divided between the employees and employers. A variety of funds belonging to different industries administer the money collected from employers and employees. Health providers can be public or private. This model is found in Germany, Austria, France and the Benelux countries.

The Beveridgian system was aimed at universal cover and was introduced by William Beveridge in Britain in 1942. With the goal of offering to every person a minimum standard of living, in his Report on Social Insurance and Allied Services, Beveridge proposed that all working people pay a national insurance contribution in order to aid people who were sick, unemployed or retired. Entitlement to benefits was not dependant on worker status but on citizenship status. Today, the entitlement to benefits is dependent on residence status.

The funding is obtained through taxation. There is a single fund that administers the money, which permits the planning of health expenses. This system is found in the UK, Ireland, Denmark, Finland, Sweden, Spain, Portugal, Italy and Greece.<sup>49</sup>

---

<sup>47</sup> Flora and Heidenheimer 1982.

<sup>48</sup> Hatzopoulos 2005.

<sup>49</sup> *Ibid.*, 117.

In today's Europe, variations of these two distinct systems can be found in the domain of health: the Bismarckian model or health insurance system and the Beveridgian model or national health system.

The main differences between these two systems can be found in how they are financed and how the benefits are distributed. Funding is obtained through contributions in the Bismarckian system, while funding is obtained through taxation in the Beveridgian system. The contributions are collected by funds which can be public or private. In addition, health services can be delivered by public or private entities. This mix of public and private allows different combinations to be offered in the provision of health services.

With regard to the distribution of benefits, the Beveridgian system offers healthcare as a benefit-in-kind. Under the benefits-in-kind system, the patient goes to different hospitals or practitioners and receives services for free. When the treatment is offered by a public undertaking, the expenses are covered directly from the budget. When the treatment is offered by a private undertaking, the private provider receives a flat rate and a fee per capita treated plus actual expenses incurred.<sup>50</sup> Patient choice is restricted.

Another way to distribute benefits is the reimbursement system. The patient goes to the health provider, pays for the service received and is then reimbursed. There are countries with a Bismarckian model who offer benefits-in-kind (Germany, Austria) and there are countries belonging to the Bismarckian system who offer reimbursement (Belgium, France, Luxemburg), and there are Bismarckian systems offering both benefits-in-kind and reimbursement (the Netherlands).

The health systems following the Bismarckian model are more inclined to introduce competitive elements and are consequently subject to a greater degree to European Union law. Once European Union law is applied, it is important to allow patient mobility or to allow other service providers to enter a market. These are changes that have to be assimilated. The health systems following the Beveridgian system also had to switch from citizenship to residence-based entitlement to benefits. The impact of European Union law has also led to the introduction of a reimbursement mechanism into such systems.<sup>51</sup> Irrespective of the type of system chosen, Member States have had to adapt the organization of their systems to European Union requirements.<sup>52</sup>

Healthcare systems are funded by various means: taxation, social health insurance, voluntary (private) health insurance or out of pocket payments. Different Member States have a mixture of funding models. Depending how it is financed, healthcare can be declared as a service within the scope of the Treaty

---

<sup>50</sup> Ibid.

<sup>51</sup> In the following chapters it will be demonstrated that under the impact of Community law, Member States with NHS or benefits-in-kind systems must create reimbursement mechanisms in order to be able to reimburse the healthcare expenses incurred abroad by those who avail themselves of the freedom of services provisions.

<sup>52</sup> See Chap. 3.

or not. Since healthcare is a universal service and the whole population needs to have access to healthcare, independent of their financial situation or their health status, every Member State tries to ensure access to everybody. In the case of the Beveridgian system, everybody has access to healthcare. When States choose an insurance system to cover the whole population, they can opt for compulsory health insurance. This ensures a basic package that the whole population can benefit from. This type of insurance is characterized by solidarity. There is an obligation to insure the whole population, there is an obligation to accept everybody no matter whether they are good or bad risks and no matter what their financial situation may be. The contributions can be income-related or a price can be determined for the basic package, but the price does not depend on risk factors. The benefits granted depend on need. Since some funds may have more bad risks, there are different mechanisms to cross-subsidize between funds.

Voluntary health insurance is meant to add different services to the basic package for those who opt for it. This type of insurance can be encountered in both Beveridgian and Bismarckian systems. Voluntary health insurance can be substitutive, complementary or supplementary. For example, it is substitutive when some groups are not covered by compulsory health insurance. For example, in the Netherlands until 1 January 2006, civil servants were covered by special compulsory private insurance. Insurance is complementary when people are permitted to choose voluntary health insurance to cover costs of care in those systems where they are required to pay part of the costs of treatment, or where extra cover may be purchase additional to the basic package provided by statutory care. Voluntary health insurance is supplementary when some people choose to take alternative voluntary health insurance in order to avoid waiting lists or to have more choice.

Member States can implement a combination of these different types of system. They can opt for a national health system where people are allowed to take out complementary, substitutive and supplementary voluntary health insurance. Alternatively, they may implement a social insurance system, offering either benefits-in-kind or reimbursement, where people are allowed to take out substitutive, supplementary or complementary health insurance. It is possible that the entities which provide the statutory insurance cover are also engaged in providing different forms of voluntary insurance. The risk of cross-subsidization thus arises, requiring that the rules on subsidies are respected. There is also the risk of unfair competition when an undertaking offering statutory insurance enters the voluntary insurance market. There is a risk of predatory pricing or of abuse of dominance of the statutory market in order to gain market power on an additional market. The rules of competition must be strictly observed in order to avoid this. The rules of the internal market can also be infringed given the existence of regulations on establishment or the provision of services. The fact that the systems are organized differently can have different degrees of impact on European Union rules.

## 2.5 Education

The organization of education systems reflects the historical, social, economic and religious evolution of society. Education can be provided by public entities, or by private entities or by a mix of public and private entities.

The State can have different levels of involvement in the provision of education. It can be involved through funding, thus it can itself fund public and private education.

In some countries schools are funded mainly by the State<sup>53</sup> and education is under the authority of the State.

In some countries public schools are funded by public funds and private schools out of private contributions. For example, this was the case in the Netherlands during the nineteenth and early twentieth centuries, which led to the ‘schools dispute’. This problem was solved by public and private schools being treated equally and receiving state funding. Some Member States have religious elements in their schools in their traditions, such as the catholic and protestant schools in the Netherlands. Some Member States provide freedom of establishment, freedom of organization of teaching and freedom of faith.<sup>54</sup> For example, in the Netherlands people can establish schools and may choose to base them on religious, ideological or educational beliefs. Private schools have the right to refuse pupils whose parents do not subscribe to the ideology or belief of the school. Private schools choose what to teach and how to teach and the role of the State is to set quality standards, to prescribe the subjects to be taught, to set targets, to set the content of national examinations, to set the number of teaching periods per year and to set qualification requirements for teachers.<sup>55</sup>

There are also various ways to organize higher education, which is the type of education for which cross-border movement is highest. Some Member States choose open access to university, others choose exam-based entry, while still others use GPA-based entry. Sometimes, Member States introduce a *numerus fixus* to restrict entry to programmes or universities, and particularly for medical studies. There are various types of *numerus fixus*, such as a single national quota, fixing the capacity of all institutions providing a particular course; a labour-market quota, which limits the supply of graduates to the demand on the market; and an

---

<sup>53</sup> In France, over 80% of the national education expenditure is funded by the State. See Eurybase, National summary sheets on education systems in Europe and ongoing reforms, January, 2009, available at: [http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047\\_FR\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047_FR_EN.pdf). Accessed 15 April 2008.

<sup>54</sup> See Eurybase The Information Database on Education Systems in Europe, The Education System in the Netherlands 2006–2007, Directorate-General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0\\_integral/NL\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0_integral/NL_EN.pdf). Accessed 17 April 2008.

<sup>55</sup> Ibid.

institution quota, which permits individual institutions to fix their own limits.<sup>56</sup> The rules regarding access to universities may also be changed as the result of the application of European Union rules. For example, a testing system has been introduced in Austrian medical programmes for those programmes affected by eight *numerus clausus* study programmes in Germany, after the rules on *numerus clausus* were challenged and the ECJ issued its ruling. The testing system was supposed to last until 2007.<sup>57</sup> The Austrian national rules could still be contrary to European Union rules. As a result of the ECJ ruling of July 2005, the share of Austrian first-year students at Austria's medical universities decreased to 45% in 2005. The Austrian authorities introduced a 'Safeguard Clause' starting with 2006/2007 reserving 75% of all places for students holding a Reifeprüfung matriculation certificate issued in Austria.<sup>58</sup>

Universities can be funded through state resources, or through contributions from students in the form of tuition fees, or through a mix of public and private funding, or through private funding. The responsibilities for funding can be shared between the national and municipal administrations, with the state intervening whenever the municipal administrations neglect their obligations. Private schools can also receive subsidies from the state, in which case they may be required to be open to all.<sup>59</sup> The State can finance private education, as in the case of the Dutch and Swedish models. There, anyone satisfying the basic standards may open a school and receive finance from the State. They may be permitted to require additional fees and/or to make a profit. Private establishments can be financially independent or government dependent, depending on the country involved. When they are government dependent they need to comply with the requirements laid down in education legislation.<sup>60</sup>

There are various types of grants that students receive from their state for their studies. Students can receive grants in the form of allowances to cover living expenses, books, study materials tuition fees and travel costs. Students can receive

---

<sup>56</sup> See Eurybase The Information Database on Education Systems in Europe, The Education System in the Netherlands, 2006–2007, Directorate-General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0\\_integral/NL\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0_integral/NL_EN.pdf). Accessed 17 August 2008.

<sup>57</sup> National Summary Sheets of Education Systems in Europe and Ongoing Reforms, Austria, January 2007, Directorate General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047\\_AT\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047_AT_EN.pdf). Accessed 17 August 2008.

<sup>58</sup> See Eurybase The Information Database on Education Systems in Europe, The Education System in Austria, 2006–2007, Directorate-General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0\\_integral/AT\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0_integral/AT_EN.pdf). Accessed 17 August 2008.

<sup>59</sup> See Eurybase, Structures of education, vocational training and adult education systems in Europe, Sweden 2008, available at [http://eacea.ec.europa.eu/ressources/eurydice/pdf/041DN/041\\_SE\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/041DN/041_SE_EN.pdf)

<sup>60</sup> See National Summary Sheets of Education Systems in Europe and Ongoing Reforms, Spain, July 2008, Directorate General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047\\_ES\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047_ES_EN.pdf). Accessed 17 August 2008.

loans at favourable interest rates, or loans which can be exempted from repayment if the student complies with certain requirements, such as the completion of studies within a given period. Grants may be performance-related, income-related or simply granted by the mere fact that the student attends courses.

With regard to grants to finance mobility, two types of support can be distinguished: support ‘earmarked specifically for mobility’ and portable national financial support.<sup>61</sup> The special support for mobility is granted by the national authorities so that students can undertake higher education abroad. The portability of financial support can be complete or conditional. Complete portability support is ‘defined as the situation in which all kinds of support available for students in their home country may also be claimed, in accordance with the same conditions of award and payment, by the reference student who undertakes all or part of his or her study abroad’.<sup>62</sup> In this case the home country does not impose any restrictions. In the case of conditional portability there are additional restrictions: ‘restrictions tied to the period spent studying abroad, the host country, the host institution, types of course, how courses or students progress, and language requirements’.<sup>63</sup> These restrictions could however conflict with free movement provisions and could be challenged by European Union law.<sup>64</sup> These restrictions must conform with European Union law and must be proportional. For example, in the Netherlands students can apply for financial assistance to pursue studies abroad. They can take courses in all twenty-nine countries involved in the Bologna process; however, the courses abroad must comply with Dutch quality standards, which are monitored by the Dutch organisation for international cooperation in higher education (Nuffic). There is no requirement that students should start their studies in Netherlands and there is no nationality requirement. However, there must be a link between the State and the recipient of the allowance and this should be proved by proving residence in Netherlands for at least 3 years in the preceding 6 years.

In Germany, since 2001, students have been granted the possibility to complete their studies in another EU Member State, after completing the first two semesters in Germany.<sup>65</sup> This rule was challenged and the ECJ ruled that Germany infringed European Union rules.

---

<sup>61</sup> Key Data on Higher Education in Europe, Education and Culture DG, 2007, available at: [http://eacea.ec.europa.eu/ressources/eurydice/pdf/0\\_integral/088EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/0_integral/088EN.pdf), p. 145, Accessed 17 August 2008.

<sup>62</sup> *Ibid.*, 146.

<sup>63</sup> *Ibid.*

<sup>64</sup> Joined Cases C-11/06 and C-12/06 *Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren* (2007) ECR I-9161; Case C-76/05, *Marga Gootjes-Schwarz v. Finanzamt Bergisch Gladbach* (2007) ECR I-6849.

<sup>65</sup> See Eurybase The Information Database on Education Systems in Europe, The Education System in Germany, 2006–2007, Directorate-General for Education and Culture, available at: [http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0\\_integral/DE\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0_integral/DE_EN.pdf).

The state is mainly in charge of quality assessment, surveillance, investigation, ensuring that regulations are respected, organizing tests, recognizing foreign degrees and financing.

Therefore, education systems present a great variety of organizational models, coming from different combinations of different factors. Every State has a different ideology behind the creation of its system. State involvement can vary in degree, but one clear conclusion can be drawn: it is a state responsibility towards its population to provide education. Different regulatory rules can conflict with European Union law. They may be simply protectionist or they may actually seek to further the ideology that underpins the national system. It is interesting to observe to what extent the European Union law applies and which rules are dismantled by the application of European Union law.

## 2.6 Conclusion

The problem today consists not in the welfare state being too weak to defend its socio-political benefit standards, but in its inflexibility precisely because of its strength.

It has been observed that different welfare systems emerged in different states, moulded by their various socioeconomic and political realities. The creation of the internal market and population mobility brings the need to align welfare systems to the new socioeconomic realities into the discussion. As the European Union lacked the political power to harmonize in the welfare field, the Court answered the need for change in the organisation of the welfare state.

‘Over a period of 50 years a complex patchwork of regulations and court decisions has partially suspended the principle of member state sovereignty over social policy in the interest of European Labour-market mobility. It now spreads to the freedom of service users and providers. The net effect is to limit national capacities to contain transfers ‘by territory’ and to shape welfare state reform trajectories, as we can see from just two examples’.<sup>66</sup> The two examples Leibfried is referring to are the pension system in Germany—where efforts have been made to avoid the ‘export’ of benefits to non-German citizens who had worked in Germany—and to the long term care insurance in Germany—where benefits-in-kind provisions aimed to prevent the Europeanization of benefits.

The Member States, since they have retained powers in the field of welfare, have to respond to the challenge and provide viable solutions not only to the social requirements originating within their territory, but also to requirements at the European Union level.

Different systems are exposed differently to the Competition law. A system that contains a mix of public and private is more susceptible to subjection to European

---

<sup>66</sup> Leibfried 2005, p. 263.

rules. The changes that the systems have to make can be greater or smaller depending on the type of system. The principles at the foundation of a welfare system should be carefully considered when European Union law is applied. Every Member State may decide to offer higher or lesser degrees of protection. For example, in defining what a service of general economic interest is Member States can decide that various services which are not necessarily regarded as basic are nevertheless important for the population and may qualify them as services of general economic interest. The obligation imposed on an undertaking to provide those services has at its foundation the principle that the welfare state pursues individual wellbeing and that more than basic subsistence should be offered. Member State choices regarding which services they consider important for their populations should be respected. This is reflected in the margin of discretion the Court leaves to the Member States.

In conclusion, the differences in organizing welfare have two important consequences. First, different systems determine the extent to which the European Union law applies. It is perhaps paradoxical that the systems which contain the most market like elements, and thus are most in tune with community philosophy, are often the ones most immediately impacted by European Union law. Secondly, in applying European Union law, the differences in organizing the systems are important in determining the margin of discretion given to Member States.

## References

- Barnard C (2000) Regulating competitive federalism in the European Union? The case of social policy. In: Shaw J (ed) *Social law and policy in an evolving European Union*. Hart, Oxford
- Briggs A (2000) The welfare state in historical perspective. In: Pierson C, Castles FG (eds) *The welfare state reader*. Polity Press, UK
- Burley A, Mattli W (1993) Europe before the court: a political theory of legal integration. *International Organization*, 47/1
- Chalmers D (2004) The dynamics of judicial authority and the constitutional treaty, Jean Monnet working papers, 5/04. <http://www.jeanmonnetprogram.org/papers/04/040501.html>
- Clasen J, Van Oorschot W (2002) Changing principles in European social security. *Eur J Soc Secur* 4(2):89–115
- Esping-Andersen G (1990) *The three worlds of welfare capitalism*. Polity Press, UK
- Esping-Andersen G (2000) Three worlds of welfare capitalism. In: Pierson C, Castles FG (eds) *The welfare state reader*. Polity Press, UK
- Eurybase the Information Database on Education Systems in Europe. The education system in the Netherlands, 2006–2007, Directorate-General for Education and Culture. [http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0\\_integral/NL\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/eurybase/pdf/0_integral/NL_EN.pdf)
- Flora P, Heidenheimer A (1982) The historical core and changing boundaries of the welfare state. In: Flora P, Heidenheimer A (eds) *The development of welfare states in Europe and America*. Transaction Books, Rutgers
- Goodin RE, Mitchell D (2000) Foundations of the welfare state: an overview. In: Goodin RE, Mitchell D (eds) *The foundations of welfare state*. Edward Elgar Publishing, UK
- Hantrais L (2000) *Social policy in the European Union*, 2nd edn. Macmillan Press Ltd, New York
- Hatzopoulos V (2005) Health law and policy: the impact of the EU. In: De Búrca G (ed) *EU Law and the welfare state—in search of solidarity*. Oxford University Press, Oxford

- Key Data on Higher Education in Europe, Education and Culture DG, 2007. [http://eacea.ec.europa.eu/ressources/eurydice/pdf/0\\_integral/088EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/0_integral/088EN.pdf)
- Leibfried S (1993) Towards a European welfare state? In: Jones C (ed) *New perspectives on the welfare state*. Routledge, London
- Leibfried S (2005) Social policy—left to the judges and the markets? In: Wallace H et al (eds) *Policy-making in the European Union*, 5th edn. OUP, Oxford
- Marshall TH (1963) *Sociology at the crossroads*. Heinemann, London
- National summary sheets of education systems in Europe and ongoing reforms, Austria, January 2007, Directorate General for Education and Culture. [http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047\\_AT\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047_AT_EN.pdf)
- National summary sheets of education systems in Europe and ongoing reforms, Spain, July 2008, Directorate General for Education and Culture. [http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047\\_ES\\_EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/047DN/047_ES_EN.pdf)
- O’Leary S (2002) *Employment law at the European Court of Justice: judicial structures, policies and processes*. Hart 2002
- Offe C (2000) The democratic welfare state in an integrating Europe. In: Greven MT, Pauly LW (eds) *Democracy beyond the state? The European dilemma and the emerging global order*. Rowman and Littlefield, New York
- Pierson C (1998) *Beyond the welfare state—the new political economy of welfare*, 2nd edn. Polity Press, Cambridge
- Rieger E, Leibfried S (2003) *Limits to globalization*. Polity Press, Cambridge
- Shapiro M, Stone A (1994) *The new constitutional politics of Europe, comparative political studies*
- Stone Sweet A, Caporaso T (1998) From free trade to supranational policy. In: Sandholtz W, Stone Sweet A (eds) *European integration and supranational governance*. Oxford University Press, Oxford
- Titmuss RM (1974) *Social policy: an introduction*. In: Brian Abel-Smith, Kay Titmuss (eds) *Allen and Unwin*, London
- Titmuss RM (1976) *Commitment to welfare*, 2nd edn. Allen and Unwin Ltd, London
- Vandenbroucke F (2002) Foreword: sustainable social justice and “open co-ordination” in Europe. In: Andersen GE et al (eds) *Why we need a new welfare state*, Oxford University Press, Oxford
- Weiler JHH (1994) *A quiet revolution: the European court of justice and its interlocutors, comparative political studies*
- Weiler JHH (1999) *The constitution of Europe: ‘Do the new clothes have an emperor’? and other essays on European integration*. Cambridge University Press, Cambridge