Although the number of hospital cases has increased continuously, the average occupancy rate dropped from 84.1% in 1991 to 75.7% in 2004. The main reason for this was a strong decline in the average length of stay from 14 days in 1991 to 8.7 days in 2004. Consequently, German hospitals were faced by a sharp decline in the occupancy and billing days.

2. THE PROCESS OF LIBERALISATION AND PRIVATISATION

The German hospital sector has always been composed of a certain variety of companies with different ownerships. Beside the public hospitals, which are owned by municipalities, regional districts or the German federal states, there has been a long tradition of non-profit hospitals run by Christian churches and various welfare organisations. For quite a long time there have also been some private hospitals which mainly cover rather small and specialised clinics. As laid down in the German Social Security Code (Sozialgesetzbuch, SGB) only those hospitals receive funding from the state and the health insurance funds which are officially registered within the national hospital plans (cf. Code No. 5, Article 108). According to the Hospital Financing Act (Krankenhausfinanzierungsgesetz, KHG) of 1972, however, the state has to respect the variety of ownership and has to make sure that all different groups of hospitals – be they public, non-profit or private – receive sufficient funding (Article 1, Para 2).

Since there has never been a public monopoly in the German hospital market, there have been no attempts for an explicit liberalisation policy. However, changes in the social, political and economic framework conditions led to an overall economisation and commercialisation of the health sector, which has promoted an ongoing restructuring process of German hospitals. One of the most obvious signs of this trend has been the growing number of privatisations. Although the first privatisation of a public hospital took place as early as 1984 (cf. Meyer-Timpe 2006), there was not much change in the composition of hospital ownership until the early 1990s. After German unification in 1990 a first wave of privatisations of hospitals took place – mainly in eastern Germany – as part of the transformation process from a former state-socialist towards a capitalist market economy. Since the beginning of the new millennium a second wave of hospital privatisations has started which now covers all regions of Germany.

Between 1991 and 2004 the proportion of private hospitals increased from 14.8% to 25.6% (Figure 1). At the same time the share of public hospitals decreased from 46% to 36% while the proportion of non-profit hospitals remained relatively stable. There are also significant regional differences in the share of private hospitals varying from 45% in Berlin to still 0% in Saarland.

Although public ownership has lost its majority regarding the total number of hospitals it still has a dominant position when the numbers of hospital beds are considered. In 2004 a majority of 52.8% of all beds were still provided by public hospitals in comparison to only 11.5% provided by private hospitals (Figure 2). The dominant position of public hospitals becomes even more pronounced regarding the number of employees: Nearly 60% of all hos-
pital workers were employed by public hospitals, while private hospitals still had less than 10% of all employees.

So far, the privatisation of German hospitals has been the domain of smaller clinics (cf. Strehl 2003). In 2004 more than 82% of all private hospitals had less than 200 beds and more than

Figure 1: Ownership of German hospitals 1991 and 2004

![Bar chart showing ownership of German hospitals 1991 and 2004]

Source: Statistisches Bundesamt (2005)

Figure 2: Proportion of hospitals, beds and employees* in Germany according to different ownerships (2004)

![Bar chart showing proportion of hospitals, beds and employees in Germany by ownership]

* full-time equivalents
Source: Statistisches Bundesamt (2005)
63% even provided less than 100 beds. Only about 4% of all private hospitals were larger clinics with more than 500 beds. In contrast to that a majority of 62% of public hospitals were of medium or large size. Nearly one quarter (23%) provided more than 500 beds (Table 1).

While in the past private hospital investors tended to focus on smaller clinics, more recently Germany has been faced with a number of more spectacular cases where larger hospitals have become privatised:

- In July 2001 the private hospital chain Helios bought 51% of the shares of the clinic of the city of Erfurt (Klinikum Erfurt), which had around 1,121 beds. In November 2002 it also bought the remaining 49% of the shares, so that Klinikum Erfurt is now a 100% owned by Helios.
- In January 2003 Helios took over 94.9% of the shares of the clinic of the city of Wuppertal (Klinikum Wuppertal) which had more than 1,000 beds.
- In 2004 the private hospital company Asklepios bought the main hospital group of the federal state of Hamburg (Landesbetrieb Krankenhäuser, LBK) which covered seven clinics with 5,688 beds. The acquisition will become fully effective in 2007, when Asklepios will have sold one of the seven clinics as required by the German Federal Cartel Office.
- In January 2006 Germany saw the first privatisation of a university hospital when the private hospital corporation Rhön Klinikum AG acquired the university clinics of Marburg and Gießen from the federal state of Hesse. Together, the two university clinics provided more than 2,400 beds.

Almost all studies on the German hospital sector estimate that the privatisation process will continue in the future and will also include larger clinics. For example, a study carried out by the economic research department of the Allianz Group predicts that by 2020 the proportion of private hospitals will increase from currently 25% up to 40% (cf. Hess 2005, 11). Other studies estimate that the share of private hospitals might even grow to 50% (cf. Sal Oppenheim 2001; Schmidt et al. 2003). Regarding university hospitals a study by Dr. Wieselhuber & Partner Consultancy estimates that in 2015 about 23% of all hospital clinics will have been privatised and further 29% will be organised through public-private-partnerships (cf. Dr. Wieselhuber & Partner 2006).

Table 1: Ownership and size of German hospitals (2004)*

<table>
<thead>
<tr>
<th>Size of hospital</th>
<th>public</th>
<th>non-profit</th>
<th>private</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99 beds</td>
<td>12.4%</td>
<td>15.6%</td>
<td>63.1%</td>
</tr>
<tr>
<td>100-199 beds</td>
<td>25.2%</td>
<td>29.4%</td>
<td>19.4%</td>
</tr>
<tr>
<td>200-499 beds</td>
<td>38.9%</td>
<td>45.2%</td>
<td>13.5%</td>
</tr>
<tr>
<td>&gt; 500 beds</td>
<td>23.5%</td>
<td>9.8%</td>
<td>4.1%</td>
</tr>
<tr>
<td>All hospitals</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

* Only general hospitals
Source: Statistisches Bundesamt (2005)
2.1 Major private hospital companies

The ongoing restructuring of the German hospital sector has led to the emergence of some major private hospital companies. Among them there is a group of four large corporations including Asklepios, Rhön-Klinikum, Fresenius and Sana Kliniken which together account for nearly one third of all private hospitals. Since all of these four companies are following a strategy of continuous expansion they are expected to acquire a much larger market share in future. Thereby, the restructuring of the hospital sector does not only include privatisations but also mergers and acquisitions among private hospital companies. The largest takeover of a private hospital so far took place in October 2005, when the medical care company Fresnius bought the private hospital chain Helios Kliniken.

The German hospital market is so far almost exclusively dominated by German companies. However, since privatisation and restructuring will continue this might also attract more foreign healthcare companies to the German market. A first major acquisition made by a foreign company took place in August 2006 when the Swedish healthcare company Capio announced the takeover of Deutsche Kliniken GmbH, which is one of Germany’s largest private hospital companies (cf. Capio 2006).

2.2 Drivers for privatisation

The reasons for the growing number of privatisations in the German hospital sector are manifold. On the one hand there are more general reasons such as changes in the overall political and economic framework conditions. On the other hand there are some more specific reasons which have to do with changes in the regulation of the German healthcare system and the system of hospital financing and their impact on the financial situation of public hospitals.

Among the more general reasons there is first of all the difficult financial situation of most public authorities in Germany, which often have to deal with large debts and high budget deficits. At the end of 2005, the total public debt of all German municipalities amounted to 83.8 billion euro while there was a public deficit of 2.3 billion euro. The financial situation of the German federal states was even worse with a total debt of 468.2 billion euro and an annual budget deficit of 24.1 billion euro.

There are many reasons for the ongoing crisis of public finances: it is partly caused by the consequences of German unification as well as by a relatively weak economic performance, persisting high unemployment and increasing social welfare payments during the 1990s. Moreover, it is also caused by a certain fiscal and tax policy in Germany which in recent times has favoured tax cuts – especially for companies and groups with higher incomes. This policy has further contributed to maintaining the weak economic performance of the German economy and has undermined the tax income of public authorities (cf. Truger 2004).

Although the crisis of public finances is rooted in political decisions, it is usually treated as a “constraint” for political action. Against that background the German federal states, which according to the German Hospital Financing Act have the main responsibility for hospital planning and the financing of hospital investments, have been less and less active in fulfilling
their tasks. For many years they have not provided sufficient financial resources for hospital investments (cf. Bruckenberger 2005). Various studies estimate that the current backlog of necessary investments in hospitals amounts to around 30 billion euro (cf. Augurzky et.al. 2004; Bruckenberger 2005; Hess 2005).

Moreover, since the German hospital financing system does no longer guarantee full cost compensation, many German hospitals have not been able to finance their operational business. According to figures provided by the German Hospital Federation (Deutsche Krankenhausgesellschaft, DKG) more than one third of German hospitals had a negative annual balance sheet in 2004 (cf. Deutsches Krankenhausinstitut 2005, 62). The municipal employers association (Vereinigung der kommunalen Arbeitgeberverbände, VKA) even claim that nearly 50% of all public hospitals were running deficits (cf. VKA 2006). The financial losses of the public hospitals have to be covered by their public owners, who are often them-selves in serious financial difficulties.

Against that background the privatisation of hospitals might be attractive for public authorities for several reasons (cf. Bruckenberger 2005; Hess 2005): First, the sales revenues might help to reduce the public debt. Secondly, the public authorities are no longer responsible for balancing the financial deficits of the hospital. Moreover, they can shift at least part of the costs for necessary investments in the hospitals to private investors.

In comparison with public hospitals private hospital companies are claimed to have several competitive advantages (cf. Hess 2005). First, they have much easier access to private capital markets in order to organise the financial resources for necessary investments. Secondly, private hospital companies are often able to organise their operational business in more efficient ways. They can, for example, make better use of economies of scale and synergy effects through the close cooperation of different clinics within the private hospital chain.

Thirdly, private hospital companies claim that they have much lower labour costs because they are not covered by the relatively “expensive” collective agreements of the public sector but have either their own company agreements or are not covered by any collective agreement at all. In 2004 the average costs per employee in private hospitals were 47,400 euro per year in comparison to 51,400 euro in public hospitals. Since labour costs amount to nearly two thirds of the overall costs in German hospitals (cf. Statistisches Bundesamt 2006a), the differences in pay and other labour costs create a major competitive advantage for private hospital companies.

2.3 The European dimension

So far, the European Union has no explicit policy on hospital services. The organisation and provision of hospitals is the full responsibility of the EU member states. As pointed out in Art. 152 (6) EC (Treaty establishing the European Community) “community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care.” However, the currently dominating economic policy of the European Union implicitly exerts a more or less strong influence on the development of hospital services in Germany.
First of all, the EU Stability and Growth Pact (SGP) determines a European macroeconomic regime which strongly constrains the possibilities for public economic policy and investments. In order to fulfill the SGP’s limits for public budget deficits German public authorities have followed a rather restrictive fiscal policy and have increasingly used privatisations to solve budget problems. The European economic policy regime has also put pressure on the German national social insurance systems whose financial deficits make a significant contribution to the overall public deficit (cf. Urban 2003, 52ff). In order to bring down the cost of the public health insurance system, for example, since the mid-1990s the German government has carried out one reform after another including major reforms of hospital financing. Finally, the development of the German hospital sector has been influenced by the EU liberalisation policy in other sectors which has promoted the general concept of privatisation as an efficient and advantageous policy strategy.

In recent years there has been a growing juridical and political debate on whether or not the German system of hospital organisation and financing is in agreement with European competition law (for an overview see: Bruckenberger et. al. 2006; Rinken and Kellmer 2006). In particular, there is a strong criticism coming from private hospital companies in Germany on the common practice according to which public authorities regularly compensate the financial deficits of public hospitals. In January 2003, the private German hospital company Asklepios sent a complaint to the European Commission in which they argued that this practice created an unlawful discrimination of private hospitals and had to be seen as a prohibited form of state aid according to Art. 86ff. of the EC Treaty. In May 2004, Asklepios brought the case before the European Court of Justice (ECJ), after the European Commission had failed to take a decision on the complaint (Official Journal of the EU C 210/16-17, 7.8.2004). The ECJ has taken no decision on the case yet. However, if the European Court agreed with the viewpoint of Asklepios, this would have a major impact on the German hospital sector and would definitively promote further privatisations.

The European Commission has regarded health services as “services of general interest” where the application of the EU competition law should be subject to some restrictions (cf. European Commission 2004). In its “Altmark decision” of July 2003, the ECJ defines some relatively restricted conditions under which public authorities are allowed to compensate for deficits of public companies (cf. Rinken and Kellmer 2006, 5). However, from a legal point of view it is still unclear if theses criteria also apply to public hospitals. In 2005 the European Commission (2005, 5) published a draft decision in which it proposed somewhat less restricted conditions for deficit compensation in public hospitals. Depending on further juridical clarifications and decisions of the ECJ and the European Council on the treatment of services of general interest and hospital services in particular the European level might have a much stronger impact on the restructuring of the German hospital sector in future.

3. PROVISION, PLANNING AND FINANCING OF HOSPITALS

The basic regulation of the provision, planning and financing of hospitals is laid down in the German Social Security Code No. 5 (Sozialgesetzbuch, SGB 5) and in the Hospital Financing Act (Krankenhausfinanzierungsgesetz, KHG). The responsibility to provide sufficient hospital