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. Brunckenberger 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 fulfil 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 these 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