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LEGAL FRAMEWORK FOR SOCIAL SERVICES DELIVERY in the United Kingdom, Germany, France, and Belgium European Standards Comparative Analysis

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PREFACE

The purpose of the present study is to describe the European Standards for the efficiency of and mechanisms for the delivery of social services.

The analysis covers the legislation and best practices in the area of social services in the United Kingdom, France, Germany, and Belgium as well as the relevant documents of the Council of Europe.

The study of separate national legislation involves the applicable legal framework, the existence of legal definitions, the process of financing of the social services delivery, the contracts for the delivery of social services, the established systems for the delivery of social services, the subjects performing social services, the types of social security, the principles of social activity, the competent authorities in the provision of social services, and the role of non-governmental organizations in the process of social services delivery.

Through the presentation of the positive practice of the most advanced countries in the European Union, the authors of this study purport to initiate a debate on the issues related to the improvement of the legal framework for the delivery of social services in Bulgaria. The authors also believe that the established European practices will be used as a basis for future legislative changes and reforms in the social sphere in the Republic of Bulgaria.

EUROPEAN STANDARDS

Documents of the Council of Europe

There are no universally accepted international and European principles governing the delivery of social services. The Universal Declaration for Human Rights (1948) does not contain provisions to that effect. The Convention for the Protection of Human Rights and Freedoms of 1950 does not govern the public relations in connection to social services either. The European Social Charter of 1961 (last amendment 1996) expressly proclaims the right of employees to participate in the process of determination and improvement of working conditions and to social security by the employer (art.22). Such a provision does not exist in relation to social services. The provision of article 14 establishes the duty of the states to encourage and promote the participation of natural persons and voluntary organisations in the delivery and maintenance of the package of social services. The text is generally formulated with regards to the persons and organisations authorised to deliver social services. The provision of art.15 of the Charter acknowledges and guarantees the right of persons suffering from physical and mental deficiencies to social integration and participation in public life. However, this text does not specify the role of the beneficiaries of social services in the process of their delivery.

The provision of art.30 of the Charter establishes the right to social protection of natural persons. It obliges the states to implement measures that would guarantee the access of persons threatened by poverty and social exclusion, to education, social and medical help, active cultural and public life. When such measures have been provided for by legislation, the state must ensure their effective implementation to socially weak persons.

Treaty for the establishment of the European Communities

The new provision of art.137, chapter 11 of the Treaty establishing the European Communities authorises the Council of Ministers to adopt a new strategy and new approaches aiming at the

combating of social exclusion. The active participation of users in the mechanism of social services delivery is an intrinsic part of this new approach.

Evaluation of the practice of the EU Member States

According to the European Commission the French law is a successful legislative model for combating of social exclusion. Under the provision of art.5 of the law the state is obliged to evaluate annually the effectiveness of the mechanism for the delivery of social services and to take the opinion of the persons and organisations engaged in this sector. The text of art.31 expressly mentions the participation of voluntary organisations in the delivery of social services particularly in providing shelter for the homeless.

The Dutch Social Assistance Law of 1988 is also a good model of a working mechanism as acknowledged in the report of the European Commission. According to this model, the local authorities must implement in the local legislation such provisions as to ensure the various forms of active participation of users in the delivery of social services.

United Kingdom

General characteristic of the social sphere

Social services involve the provision of care and support to a considerable number of people so as to help them live a better and more complete life. Thousands of people in England rely on social services in cases of family or personal crisis, mental illness, bringing-up children - born invalids, divorce, death, or other events as a result of which a person is left without the necessary means for living and support.

Since 1948 the provision of social services has been assigned to the Ministry of Health (on questions of public health and other aspects of social assistance), the Ministry of Social Affairs (assistance to persons of age and to the invalids), and the Ministry of Child (childcare). In 1960 these institutions merged to form the Ministry of Social Affairs in Scotland and the Ministry of Social Services in England and Wales. This merge accelerated all social activities.

Nowadays the system for the delivery of social services in the United Kingdom is established as one complete system administrated by the state and including three types of benefits:

1/ income-related benefits (income support, unemployment benefit) and financed through the national tax system; this type of benefits function as a network for security;

2/ contributory benefits. This type of benefits are financed by the National Security Fund formed from the mandatory contributions made by employers and employees. The assistance covers sickness, maternity, unemployment, retirement benefits, widowhood benefits, and are normally of equal amount;

3/ non-contributory benefits. These benefits are financed through the national tax system and are determined on the basis of the individual characteristics of the given person (child, disability). Thus, for example, the National Health Office provides universal healthcare which does not depend on the making of contributions.

The Ministry of Social Security is responsible for the development and realisation of the social security programs. The policy decisions in the social sphere and on objectives and priorities are taken by the Secretary of State and the rest of the ministers in the government. The Inland Revenue is in charge of collecting contributions and registering all contributors, and of the assessment and payment of the tax credits for the working families and working persons suffering from disability or illness. The employment office at the Ministry of Labour and the Assistance Agency hold a joint responsibility for the administration of the benefits to the unemployed while the local authorities manage the assistance provided to households. Employers are obliged to pay sickness leave and maternity leave as determined by the law. The

National Health Service, through its organs, receives funding for the delivery of healthcare services to the local community on the basis of contracts with the health trusts and other persons/organisations delivering such services. The social services are delivered by the local councils on the basis of the legal framework and funding provided by the Ministry of Health. The employees, on their behalf, must make national security contributions to support those who are unable to meet their needs independently. Those who can afford it may make supplementary voluntary contributions, for instance, for pension.

Legal Framework

General legal framework: National Health Service and Community Care Act of 1990, Community Care (Residential Accommodation) Act of 1992, Carers (Recognition and Services) Act of 1995, Community Care (Direct Payments) Act of 1996, National Health Service (Primary Care) Act of 1997, Community Care (Residential Accommodation) Act of 1998, Care Standards Act of 2000;

Healthcare: National Health Service Act of 1977, Health and Social Care Act of 2001, Health Act of 1999;

Sickness: Social Security Contributions and Benefits Act of 1992, Social Security (Incapacity for Work) Act of 1994;

Invalidity: Social Security Contributions and Benefits Act of 1992, Social Security (Incapacity for Work) Act of 1994;

Maternity: Social Security Contributions and Benefits Act of 1992;

Aged persons: Social Security Contributions and Benefits Act of 1992 and the Regulation on its implementation, Pensions Act;

Unemployment: Social Security Contributions and Benefits Act of 1992, Jobseekers Act of 1995

Family benefits: Social Security Contributions and Benefits Act of 1992;

Statutory sick pay and industrial injuries: Social Security Contributions and Benefits Act of 1992, Social Security Administration Act of 1992;

Childcare: Children Act of 1989.

Legal definitions

The National Health Service and Community Care Act of 1990 contains a definition (art.46(3)) for "local authority" for the purposes of providing social services as "the council of a county, a metropolitan district or a London borough or the Common Council of the City of London". The "community care services" are defined as "services which a local authority may provide or arrange to be provided under any of the following provisions:

- (a) Part III of the [1948 c. 29.] National Assistance Act 1948;
- (b) section 45 of the [1968 c. 46.] Health Services and Public Health Act 1968;
- (c) section 21 of and Schedule 8 to the [1977 c. 49.] National Health Service Act 1977; and
- (d) section 117 of the [1983 c. 20.] Mental Health Act 1983; and

"private carer" means a person who is not employed to provide the care in question by any body

in the exercise of its functions under any enactment.”

The Standards Act of 2000 defines in its art. 2(7) in chapter 14 the health services listed in the act as including:

- medical treatment under anaesthesia or sedation;
- dental treatment under general anaesthesia;
- obstetric services and, in connection with childbirth, medical services;
- termination of pregnancies;
- cosmetic surgery;
- treatment using prescribed techniques or prescribed technology.

The Carers (Recognition and Services) Act of 1995 provides in art.1.2(b) that where such an individual (carer) “provides or intends to provide a substantial amount of care on a regular basis for the disabled child, the carer may request the local authority, before they make their decision as to whether the needs of the disabled child call for the provision of any services, to carry out an assessment of his ability to provide and to continue to provide care for the disabled child; and if he makes such a request, the local authority shall carry out such an assessment and shall take into account the results of that assessment in making that decision.”

The Social Security Contributions and Benefits Act of 1992 defines which persons are obliged to make social security contributions. The contributor is a person (“employed earner”) who is “gainfully employed in the United Kingdom either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E...” or is self-employed (art.2(1)).

Participation of non-governmental organisations in the delivery of social services

The Community Care (Residential Accommodation) Act of 1992 governs in a special section the conclusion of arrangements for provision of accommodation in premises maintained by voluntary organisations. The provision of art.(1A) governs these arrangements when they are made with any voluntary organisation or other person if they are for the provision of residential accommodation with both board and personal care for such persons as are mentioned in section 1(1) of the Registered Homes Act 1984.

The enactment of the National Health Service and Community Care Act in 1990

brought about the establishment of a new model for the provision of social services. Before, these services were mainly provided by the local authorities (local social councils); now these authorities delegate their provision to voluntary and private organisations representing the independent sector.

Under the system of social care in the UK the beneficiaries of social services who pay directly for them do not rely only on assistance provided by the local councils. They can benefit from a package of social services including also services from independent providers.

Financing of social services

Type of social services -Financing

Sickness and maternity healthcare - Services provided by the National Health;

Services are funded by the government and to a small degree by contributions

-cash allowances: Paid by contributions and taxes:

a/ statutory maternity pay; b/employers require 92% of these expenses from government, small employers

may ask for the whole amount plus 5% compensation.

a/statutory sick pay; b/paid by employers with help from government in cases of long periods of incapacity for work.

Long-term attendance - There is no single scheme for providing long-term attendance. Such allowances are financed by the government from taxes;

homes for the elderly and for invalids are financed by local authorities

Invalidity - Long-term invalidity is financed by the National Insurance Fund on the basis of contributions

Benefits for the aged. The pensions on a non - contributory basis are financed by the government. The remaining part is paid out by contributions.

Industrial injuries - The full amount of benefits is paid by government out of taxes.

Unemployment - The contributory benefits are paid on the basis of contributions, the income-related benefits – from taxes

Child's allowances - Paid by the government out of taxes.

The contributions due are determined on the basis of the weekly income:

1/ for the employee – for income under 106 EUR no contribution is due; above this amount the contribution is 10% of the income; for income between 106 and 801 EUR the contribution is 8.4%; 2/ for employers – for income under 133 EUR no contributions are due; above this amount the contribution is 12.2% of the income.

Contract for providing social services

The National Health Service Act provides for the conclusion of contracts for the provision of social services: this is an agreement according to which one health service body assigns to another such body the provision of goods and services, where the delivery of these goods and services falls within its competence and functions. A healthcare body means (a) Health Authority, (b) Health Board, (c) Common Services Agency for the Scottish Health Service, (d) Family Health Services Authority, (e) National Health Service Trust, (f) recognised practice – funds-owner, (g) Dental Practice Boards, (h) Public Health Laboratory Service Board, and the Secretary of State.

At the end of last year, a Compact on Relations between Government and the Voluntary and Community Sector in England was signed. The compact is a framework document promoting a new approach towards partnership between the state and the independent sector. Under the Employment Project – Millennium the Greenwich Council has entered into partnership relationship with the local colleges and with a certain number of small enterprises. The subject of the partnership is providing support to elderly people with difficulties in education often

accompanied by mental or physical problems. The project is jointly funded by the participating organisations and by the European Social Fund.

Legal Framework of the basic types of social services

a/ family allowances: these are provided on a monthly basis and amount to 100 EUR for the first born child and 67 EUR each for the next born children until they reach the age of 16 (or until the age of 19 if they continue their high-school education). These benefits are not taxed.

b/ maternity pay: 160 EUR for expected child, born or adopted, paid out of the Social Fund and not taxed.

c/ unemployment benefits: there exist two schemes for unemployment benefits: 1/ contributory benefits determined on the basis of the paid contributions for a period of at least two years back, and 2/ income-related benefits. The benefits are paid on the condition that the person is non-voluntarily unemployed, has a capacity to work, is in active search of employment, is not engaged in work for more than 16 hours per week, is not a regular student, resides in the United Kingdom, does not possess savings over 12, 808 EUR, and is not older than 65 years (men) and 60 years (women).

FRANCE

Compensations paid by third persons to adults as a social service

The French Law of 30/6/1975 officially recognises the right to third persons to support adults with disabilities preventing them from performing everyday life activities. The so-called compensatory payment aims to assist the disabled persons in performing such activities. The beneficiaries have the freedom to decide on the use of the monthly amounts they receive. They have to declare only the expenses over 80% of the compensation used and therefore the allocation of expenses is unlimited. The compensation may be used by the disabled persons or by their families, may be invested, or may be used to pay other persons without having to be declared before the tax authorities. Generally, there is no guarantee that the compensation will be used for the particular purpose for which it has been provided.

Services to dependants – another type of social service

The legislative imperfection described above lead to the introduction of the so-called service to dependants (PSD). Before, the situation of the aged persons in need was similar to that of the disabled. They were supported through the financial help provided by third persons. Socio-demographic studies indicate that 60-80% of the financial help provided to persons by departments was allocated to retired persons. There is no guarantee that the aged persons could be assisted by their spouses or by their children who may not live close enough as to provide everyday assistance to their parents.

The service to dependants was introduced by Law No. 9760 of 24/1/1997. The primary purpose of the service is to provide support to the elderly. The law establishes cumulative conditions for eligibility for such a service related to the age of the applicant (at or above 60 years) and to the availability of means for living under a certain threshold.

Persons providing the service

The service is provided by one or more persons hired as personal assistants through an agency specialised in the delivery of such services or through an organisation with such activity. A member of the family (except the spouse) may also be hired as a personal assistant and receive a compensation.

To summarise, the most widespread mechanisms for providing social services in France are two:

mechanisms for compensatory payment by third persons and mechanism for providing services to dependants.

Setting up the criteria for dependency and evaluation of needs. Application procedure and financing

Similarly to the compensatory payment by third persons, the service to dependants is provided in response to an application for assistance submitted by the dependant. The assistance is provided by a third person and intends to meet the basic living needs of the dependant. The application is submitted to a medico-social team at least one member of which must have visited the applicant. The evaluation is made by experts applying a national program known as AGGIR schedule. The program covers the following categories of persons:

ISO Group-Resources (GIR I) – aged persons with limited ability to move, unable to leave the bed or wheel-chair, with serious mental disturbances who are in need of permanent care;

GIR II – covers two categories of persons. One includes people whose mental ability is not completely disturbed and who need attendance in performing basic everyday living activities. The other includes people with mental disturbances but with preserved ability to move independently;

GIR III – covers aged persons with preserved mental ability and certain ability to move but who are in need of assistance several times per day in order to maintain their physical independence;

GIR IV – covers people who are attended to at their home and the service is financed from their pension fund or from social benefits to the retired. This type of financing is subject to criticism but its positive feature is the well organised assistance.

The medico-social team develops a plan for assistance within 40 days after the day of submission of the application for help. The applicant must either approve the plan within 8 days or demand the development of another plan. The payment commences no later than 2 months after the application has been submitted.

Evaluation of resources and calculation of payments

The service to dependants as a source of financing is combined with the personal resources of the person in need and where necessary, with the resources of the spouse. The upper limit for the financing is fixed at FRF 72,000 per person per annum and FRF 120,000 for a married couple. In other words, the amount of the benefit is FRF 6,000 per person and FRF 10,000 per couple per month.

The service to dependants is a form of payment for a social service, it is due to be given back by the inheritants of the person who has received such service but only if the payment has exceeded the sum of FRF 300,000.

Form of payment

The service to dependants may be provided in-kind or in cash (for example, a cheque in the name of the applicant). It may only be used to cover the expenses originally indicated in the plan. This is the principal difference between this type of service and the compensatory payment where there is a freedom of disposal with the paid compensation.

Mechanism of allocation of means and providing personal assistance

The person using a service to dependants may hire one or more persons working for the local authorities or for a non-governmental or commercial organisation or even neutral persons, for

example, neighbours. He/she may hire members of the family except the spouse or partner.

The funding for this type of social service may be used to cover normally the expenses for food and activities like alarm system, temporary residence, change of shifts, etc. These activities are funded according to the original plan.

At least one member of the medico-social team must monitor the home of the person who has received the service. This would mean to make at least one annual assessment of the efficiency and quality of the provided service.

If the assistance endangers the health, security and the moral or physical well-being of the service recipient, the recipient may demand the appointment of another assistant. In cases where this proves impossible, the recipient may demand a termination of the service.

Positive aspects of the service

- It is a co-ordinated and personalised care plan implemented jointly with the local authorities;
- The period for evaluation of the application is short – 2 months;
- The dependants have the right to choose their personal assistant;
- The monthly payment per person (about FRF 3,200) is a considerable sum;
- The assistance may be provided at the homes of the assisted persons.

Potential of the system

For the year 1999, the areas of priority for development of social services include:

- qualification of the persons providing assistance
- paid assistants
- family assistants

The law establishes rules for the training of assistance personnel but as for the moment there is no funding planned, the rules have not been implemented.

The co-ordination among the persons providing this type of services is done by evaluating the needs of the individual persons. On the other hand, it is also necessary to co-ordinate the policy of the various institutions, departments, centers for social services, associations, and funds.

Categories of assistants

The hourly rate for the service provided to dependants varies according to the provider:

- a hired paid assistant receives FRF 50 per hour);
- home personal agency working with the local authority, or
- voluntary organisation (its staff works for FRF 80 per hour).

In summary, the service provided to dependants combined with the plan for personalised care

has proved to be an effective method for ensuring home personal assistance to individual persons and their families.

Subjects of the right to assistance under the Code of Social Activity and Families

Persons aged 60 and over

Under the provision of art.113 par. 1-3, each person aged 60 and over may be the subject of the right to social assistance which, for this category of persons, may take two forms:

à/ lodgement in a social institution;

á/ lodgement with private persons.

The lack of capacity to work of these persons is evaluated by a special committee. In addition, at the state level there exists a Committee on Gerontological Development whose task is to evaluate the quantity and quality of the periodically granted benefits and their importance for the recipients.

Persons with difficulties, invalids, and persons with physical, mental and sensory disturbances

The provisions of art.114 et seq. of the Code of Social Activity and Families govern the equal status of persons with physical, mental, and sensitive disturbances as compared with that of other natural persons. As a result of their condition, they are entitled to compensatory payments irrespective of the origin and the nature of these disturbances, their age and way of life. The funding aims to ensure a minimum of means for covering their living activities.

Competent authorities in the provision of social services

The Code of Social Activity and Families contains provisions on the authorised social services providers. These include:

² . Public and State authorities:

- the state;
- the departments;
- the municipalities;
- social security organisations.

II. Community and inter-community social activity centers

Municipal social activity centers - legal framework under the Code of Social Activity and Families (art. L 123)

The municipal social activity center has as its main purpose the protection and social development in the municipality. This activity is performed in close cooperation with the existing public and private institutions. One of the center's functions is to promote the process of financing under the form of retrievable or irretrievable sums. This is one of the forms of social assistance as defined by the law.

Certain municipalities have established communal and inter-communal centers for social activity which exercise control on the municipalities involved in the area of social activity. These centers

act as administrative formations – municipal property. They can be managed by a Managing Board, by the mayor of the municipality, or by the president of an institution for inter-municipal cooperation.

Associations – legal framework under the Law on Services to the Handicapped of 1975 (Loi n° 75-534 du 30 juin 1975 d'orientation en faveur des personnes handicapées - Journal Officiel du 1er juillet 1975)

The provision of art.1 of the law defines the persons and institutions that can deliver services to the handicapped persons and to persons lacking good conditions of life. These include:

- the state;
- the local public authorities;
- the public institutions;
- the social security institutions; and
- the associations.

These legal subjects are engaged in activity towards ensuring a complete autonomy of the dependent persons in performing their everyday activities.

The state exercises an overall co-ordination of the activities related to the national policy in consulting handicapped persons. The state serves as a mediator between the various interested parties through the Inter-institutional Committee for coordinating the adaptation of invalids. It is also engaged in active cooperation with the associations performing activity in the social sphere.

The mechanism for cooperation between the state and the non-governmental organisations in the area of education is as follows: in each department a commission consisting of highly qualified members has been established by force of the law. The members of the commission are elected upon the suggestion of: associations of parents, associations of children, or associations of families of handicapped children.

The provision of art.56 of the law specifically refers to the participation of non-governmental organisations in the delivery of social services. In order to facilitate the socio-professional integration of handicapped persons the state, in cooperation with organisations and associations active in this area, drafts and implements a program for the constant information of the public about the various categories of handicapped persons and their problems.

GERMANY

Legal framework

Care Insurance law (01.01.1995 ä.)

General provisions

Care providers. Sources.

The social care institutions are private, public, and state. They are sponsored from three main sources:

- clients of the care-providing institutions (from their personal resources or from the financial

help they receive from the social insurance);

- contributions paid by the social insurance on the basis of assessment of needs;
- contributions paid by the social insurance in cases where the client is not eligible for social insurance.

The social care providers pay for expenses covering:

- personal care/personal hygiene of the client;
- nutrition;
- mobility;
- household.

Payment

The hourly rate for social care delivered at home depends on the region as determined in the contract between the social security institutions and the social care institutions.

Note: Social care/services means all kinds of services needed by the client, including medical care.

New program for social insurance

Permanent/long-term care)

The persons in need of permanent social care are those who, as a result of disease or incapacity to work are helpless to a degree which requires permanent assistance for the performance and satisfaction of their everyday activities and needs.

Characteristic

The new program for permanent social care insurance to the needy involves all persons hired to work in Germany irrespective of their nationality.

The program introduces a mandatory system based on the principle that the long-term care insurance follows health insurance; i.e., as the health insurance may be mandatory (social) or private (voluntary), the permanent care insurance follows the same model.

In this respect the new legal framework for the insurance unites two schemes – the program for social (mandatory) care insurance, and the plan for private (voluntary) care insurance.

- Long-term social care insurance

Each person who is mandatorily or "socially" insured is also obligatorily

included in the program for long-term mandatory "social" insurance for social care. In practice, this system applies to all public servants and the members of their families (about 92% of the population).

- Long-term private insurance

The individuals included in the system for private health insurance are also insured privately for long-term care – they represent about 7% of population.

Long-term “social” insurance – mandatory insurance for care

Note: In this paragraph, “social” insurance is used to mean mandatory insurance.

Principles

The new scheme for long-term insurance is based on several principles:

- relief of persons in respect of expenses related to social care and assistance;
- avoidance or decrease of the need for social care through medical prophylactics and rehabilitation;
- advising and consulting and providing the persons with lists of insurance funds so that the client may have a choice of an insurance fund

Financing

The long-term “social insurance” is financed from the equal contributions made by employers and employees. The payment of contributions is not required for the insurance of unemployed spouses and children.

The contributions from employees are deducted in advance from their salaries by the employer who forwards them to the health-insurance funds. From these funds, the contributions are forwarded to the respective social care fund.

Management

The new system of insurance is implemented by the health-insurance funds through their offices throughout the country.

The long-term social care insurance funds are autonomous legal persons with a non-profit purpose holding a status of public corporations independent from the state.

The private clinics and agencies for home social care delivery are not a property of and are not managed by the social care insurance funds. These belong to public, beneficial, or private owners.

About 10% of the private clinics are a property of the local authorities, 54% belong to churches or other beneficial organisations, and 36% are a private property.

43% of the agencies for home care are a private property, 51% belong to beneficial organisations, and 4% - to local authorities.

Contract for care delivery

Under the law, the private clinics and the agencies for home care may provide care to the persons in need at the expense of the insurance funds only on the basis of the so-called contract

for care delivery (Versorgungsvertrag).

The parties to the contract are:

- the respective private clinic or the agency for home care;
- a joint group of regional associations of the long-term insurance funds.

The regional association of long-term insurance funds may refuse to sign the contract or may terminate it only where the private clinic / agency for home care does not meet the standards of care or if it fails to perform economically.

Functions

The contract for care delivery has three main functions:

- determines the type, the nature and the scope of the help and care that will be delivered by the private clinic or by the agency for home care for the term of the contract;
- obliges the private clinic/agency for home care to deliver quality care to the persons in need and insured by the funds;
- obliges the long-term care insurance funds to pay the care providers (private clinics, agencies for home care) as agreed in the contract.

The private long-term care insurance is organised by private health-insurance companies.

The benefits available under a private care insurance plan are equal to those available under the social long-term insurance scheme.

The private insurance companies are obliged to offer acceptable terms and prices to families and to elderly members.

In order to be insured for social care, a person must meet the following conditions as set up by the law:

- a necessity for permanent, multiple, and substantive assistance in the performance (satisfaction) of ordinary everyday human activities/needs for a long period of time;
- the need for care must have existed for a period of at least six months – this is the legal meaning of “long-term”.

Where a given person meets the legal requirements for care insurance, he/she is

entitled to receive all types of care included in the insurance system. The financial condition of the person in need as well as that of his/her family is irrelevant.

In the assessment of whether a person meets the legal requirements for care delivery, the following four elements are taken into consideration:

- personal hygiene – washing, bathing, combing, etc.
- nutrition – including the preparation of food so as the person can accept it;

- mobility – getting out of bed, going to bed, dressing, undressing, walking, standing, climbing of stairs, etc.;
- housework – cooking, shopping, cleaning, washing, etc.

There are eight basic types of long-term care that can be delivered.

Home care

The home care is provided in cash or in kind but only when the person in need has ensured the receiving of the care from family members, relatives, or neighbours.

Where the person in need prefers to receive professional care at home, the scheme offers home visits by professional nurses; In these cases, the social assistance benefit is paid directly to the respective agency for nurses.

Assistance for support

Relatives, friends, neighbours or other persons providing non-professional care to the person in need, are entitled to four-weeks holiday per year, during which the insurance social care fund pays for the delivery of professional home care up to 1,400 EUR. This is also valid where the care provider is sick or otherwise prevented from delivering the care.

However, the care provider must have taken care of the person in need for a period

of at least twelve months before the moment when he/she is temporarily unable to provide the care.

Part-time assistance/care

Part-time care is provided to persons who need long-term care and cannot receive the necessary assistance from members of their family or relatives.

Short-term assistance

Where the part-time and/or home care are not sufficient for the person in need, he/she can receive the necessary assistance and care in an institution for short-term care.

Technical assistance

The persons in need are entitled to receive also technical assistance / facilities, including special beds, adaptation of the home conditions to their requirements, etc.

Training of caretakers

The long-term social care insurance funds are obliged to offer to the relatives of the persons in need or to other non-professionals free training for care-taking.

Insurance of non-professional caretakers

The relatives, friends, neighbours, or other persons providing non-professional

care to the persons in need, are covered by the retirement insurance schemes if they meet the following requirements:

- they are unemployed or employed permanently for less than 30 hours per week;
- they provide free home care to the person in need for at least 14 hours per week.

Permanent/long-term professional care (assistance)

About 550,000 persons in need receive specialised professional care in homes for the elderly or in private clinics.

Belgium

Relevant legal framework

The legal framework of this issue is set up by the Law on the mandatory health and sickness insurance of 14/07/1994. (Loi relative à l'assurance obligatoire soins de sante et indemnites).

Basic principles

The financial help for invalidity as a type of social service involves current income-based financing on the basis of preliminary contributions.

Scope of application

The eligible applicants for this type of financing include persons who have been employed and are able to continue their employment and possess the status of "employee".

Risks covered by this type of financing. Definition of "invalid". Conditions for financing.

An employee who, as a result of sickness or handicap cannot produce more than

one-third of the average production by an employee of the same category and with the same qualification is considered as an invalid.

The Belgian social system sets up a minimal degree of incapacity to work equal to 66,66%. The period of financing starts after the first day of the period of incapacity to work and continues until the persons reach the retirement age. The shortest period of financing is six months. The specific amounts to which a given person is entitled is determined on the basis of the previous income of the person and his/her family status. The specific amounts are determined as follows:

- 65% of the lost income where the person incapable to work has dependants;
- 45% of the lost income where the person does not provide for other persons;
- 40% of the lost income where the person has an extra-marital co-habitant but does not provide for him.

In certain particular cases the recipient of the financial help who lives alone or in co-habitancy but does not have to provide for the co-habitant may be entitled to 65% of his/her former

income if it is proved that he/she needs assistance from third persons in performing his/her everyday life activities. The periodically provided amounts of social financial help for invalidity (indemnité d'invalidité) reach BEF 3,772.05 (EUR 94). Where the users' price index rises these amounts are increased accordingly.

To summarise, the amount of the financial help is adapted to the standard of life by using a fixed annual quotient or an annual fee on the sums provided.

Accumulation of the financial benefits for invalidity and other social benefits

The social benefits for invalidity may be increased by adding:

- a social pension for accident at work;
- a pension for professional disease.

In cases such as these the increase may go up to a certain limit as set up by the law. The invalids are entitled to engage in paid professional activity during their temporary incapacity to work. The assessment of the capacity to engage in such activity is done by a medical expert from an insurance company. With this type of increase the financial benefit must not exceed the daily amount which would have been provided without the increase.

Taxes and social insurance contributions

The financial benefits provided to invalids are subject to taxation with a possibility

to reduce the tax burden. There is a correspondence between the reduction of the tax, on the one hand, and on the other – the tax due by a beneficiary without taxable income and without dependants. The family status is also considered. The taxable base is determined on the basis of the net income and the family status. If the net income is not exceeded, the reduction of the tax for social insurance contributions is unlimited and therefore these contributions are not taxed.

Social insurance contributions from pensions

It is possible that a law or other legislative act provide for contributions deducted from pensions for invalids, to be used for various social activities (for example, the so-called "solidarity contributions" (cotisation de solidarité). They can vary from 0 to 2 % on the pension.

Legal subjects active in the delivery of social and healthcare services:

- the state;
- the local authorities;
- charity organisations;
- commercial companies;
- religious societies.

The new generation of social services is developed on the basis of the principle of de-institutionalisation, of collective and community work, as well as through involving the users of the particular services in the activity of the organisations-providers.

The state plays a vital role in the regulation and control of social services. Such authority is

vested in general on the local authorities which remain the primary providers of social services. They perform their activity locally and through Community welfare centers.

The legal framework is provided for by the Law on Public centers for social help of July 8, 1976 (Loi organique des centres publics d'aide sociale - 8 juillet 1976). Under the provision of art.118 et seq., the centers for social help may form their associations.

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