Some preliminary remarks on LTC-systems[1]

YVES JORENS
University of Ghent, Law Faculty

SUMMARY: ***In this article author describes long term-care in european countries. Article begins by examination of different definitions of LTC in EU members. Then author analyzes organization, funding, scope and various categories of benefits.***

Demarcating and defining the social risk and coverage provided by the member states

The OECD has defined long-term care as *"a cross-cutting policy issue that brings together a range of services for persons who are dependent on help with basic activities of daily living* ***over an extended period of time***"[2]. Elements of long-term care include rehabilitation, basic medical services, home nursing, social care, housing and services such as transport, meals, occupational and empowerment activities, thus also including help with instrumental activities of daily living.

Generally, three categories of persons are in scope: (1) persons with physical or mental disabilities, (2) the frail elderly and (3) particular groups that need support in conducting their daily life activities.

This description is – among others – often used as a benchmark in order to define the *social risk* behind LTC. The definition seems to be based on the (dis)ability to conduct basic instrumental activities of daily living (IADL).

The table (Table 1, above) evidences diversity in both scope and characteristics of LTC. For example:

- Some Member States do not have a legal (universal) definition of the social risk(s) covered by their LTC system. This does not mean that there is no focus at all: the social risk might be implicitly defined by other subjects. Bulgaria (BG), for instance, is not common with a particular description of the social risk; it is however indirectly defined by the categories of disability, reduced work capacity, etc.

Table 1. ***Definition of LTC***

Definition Of Social Risk(S)/LTC Benefits	Range Of Definition(S)	Comparison With The Oecd Definition	Member States
Yes	General definition	Member state's definition is equal or broader (more sophisticated and detailed) than the OECD definition	BE, CZ, LV, LU, PT, ES, DE
		Member state's definition is more restricted (less sophisticated and detailed) than the OECD definition	CY, DK, EE, FI, IS, LT, NE, SI, SE, AT
	Various descriptions, depending on the particular scheme/benefit		FR, IE, IT, PL, CH, LI
No			BG, GR, HU, MT, NO, RO, SK, UK

[1] Tekst przygotowany przez prof. Yvesa Jorensa z Uniwersytetu w Gandawie w ramach zespołu Think Tank w projekcie *Training and reporting on European Social Security*. Autor wyraził zgodę na jego opublikowanie w Zeszytach Naukowych.

[2] As cited by EUROPEAN COMMISSION, Joint report on social protection and social inclusion 2008, Brussels, European Commission 2008, ec.europa.eu/employment_social/spsi/joint_reports_en.htm, p. 81.

• A few Member States redirect to related definitions within the different branches of the national social security and/or public assistance schemes.

• Most Member States apply a specific definition in order to mark out the social risk. Some of these Member States have a definition which coincides with the OECD description, and therefore is based on the notion of IADL (asic instrumental activities of daily living). Spain (ES), for example, defines the risk as *"…the situation of a person who, on account of age, disease or incapacity, and linked to lack or loss of physical, mental, intellectual or sensorial autonomy, requires assistance from (an)other person(s) or considerable help to carry out essential daily activities or, in the case of persons with a mental disability or illness, other forms of support for their personal autonomy."* On the other hand, some member states are familiar with a rather abstract and/or minimal definition. A good example is Cyprus (CY): *"…need of care due to mental or physical incapacity or social distress."*

Statutory organisation. Social security (insurance) and/or public assistance?

In order to understand a Member State's view of and policy towards LTC, the statutory organisation (public law) and legislative technique must be charted. The legal framework often indicates whether or not a Member State deploys an integrated and deductive approach towards the particular social risk. On the other hand, the existence of several piece-meal arrangements could be a result of historical factors. It should be borne in mind that the present analysis aspires towards a global (integrated) approach in classifying the Member States' LTC systems. This means that both social security (insurance) and public assistance schemes are taken into account in order to compare the key elements (accessibility, quality and care coordination) of each national system.

The provision of benefits should indeed be assessed on the question whether residents have a subjective right on LTC or not. Therefore, it is necessary to view LTC as a whole, and include every possible scheme and benefit that meets the risk of dependency and help with daily living activities – irrespective whether or not the beneficiary has to fulfil certain (means- or contribution-related or other) conditions. Irrespective of the organisation through either an integrated or distributed care system, LTC may be part of a social security (insurance) branch, and/or a public assistance scheme. Both concepts are rather theoretical and based on legal doctrine, and are therefore not always clean-cut and do sometimes even conflict. Nevertheless, the distinction between social security and public assistance is useful in drawing up a typology of LTC.

On the one hand, social insurance schemes can be defined as schemes in which social contributions are paid by employees or others, or by employers on behalf of their employees, in order to secure entitlement to social insurance benefits, in the current or subsequent periods, for the employees or other contributors, their dependants or survivors. On the other hand, public assistance schemes can be defined as schemes covering the entire community, or large sections of the community, that are imposed, controlled and tax-funded by the government. In this respect, such schemes should not be mixed up with social assistance benefits according to Regulations 883/2004 which are clearly based on a discretionary decision by the competent authorities. Most of the Member States are acquainted

Table 2. *Statutory organisation*

Statutory Organisation	Classification	Member States
Global care system and/or unifying legislation	Social security	BE (Flemish region), LU, NL, SE
	Public assistance	CY, DK, EE, ES, UK
	Combination of both social security and public assistance	/
Differentiated approach (disintegrated care system)	Social security	CZ, CH, AT, LI
	Public assistance	HU, LV, MT, RO
	Combination of both social security and public assistance	BG, FI, FR, GR, IS, IE, IT, LT, NO, PL, PT, SK, SI, DE

with a differentiated approach, and spread their benefits related to LTC over several branches of their existing social security and/or public assistance system. Within this line of thought, it is most likely to approach LTC via both social security and public assistance schemes. Only a few Member States have a 'pure' globally oriented system, being either social security related or within the public assistance scheme. Some Member States' schemes could be types as 'characteristic', and are therefore well-placed within the above mentioned typology:

- Cyprus (CY) has a centrally organised global care system, based on the idea of public assistance. The scheme is financed by the state budget. Benefits are means tested, which means that the scheme bears the costs for those whose resources are not sufficient to meet special needs for care. This implies, for instance, that the beneficiary has to contribute a certain amount of his/her social insurance pension towards the fees for residential care. Furthermore, a welfare officer (official) supervises the management and spending of the personal budget (allowance).
- The same goes more or less for Latvia (LV), although this member state does not have unified legislation: the legal provisions consist of the co-ordination of various schemes related to social services for the elderly, disabled and children.
- Belgium (BE) shows a rather complex system, of which only the Flemish region is familiar with a global (one particular legislation) care system. The scheme is more social security oriented, since the person covered has to pay a contribution to a 'zorgkas', and therefore does not include a means test.
- A striking example of the co-ordinated approach throughout both social security and public assistance schemes is that in Lithuania (LT): there is no special legislation; LTC is granted through several branches: social services on the one hand, invalidity and sickness (healthcare; social security) on the other hand. The schemes are financed by both social security contributions, as well as the general state budget. Benefits in cash do not require a means test, in contrast to allowances for institutional care (which do require a means test).

Benefits package

In order to meet the physical and financial difficulties related to the social risk of LTC, a Member State must develop a specified approach towards the provision of benefits. In the first place, this necessarily implies that the Member State has to opt for a certain type (nature) of benefit(s) (benefits in kind and/or in cash?). Secondly, the question remains how the Member States will present the benefit to the persons entitled to LTC. If the Member State opts for the provision of benefits in kind, it should either organise its own services (home care, [semi-] residential care, other services), or delegate the realisation of this legal duty to private and/or informal institutions, financed by the Member State's budget. Essential within this line of thinking is that

Table 3. *Coverage and choices (benefits)*

MULTIDISCIPLINARY APPROACH (Benefits in Kind And/Or in Cash?)	Organisation (Choice of Provider/Spending/Benefit)	Member States
Only benefits in kind	Only state-run	/
	Only private institutions and/or informal caregivers tylko prywatne instytucje.firmy	/
	Combination of both public and private institutions and caregivers	DK, EE, FR, IS, LV
Only benefits in cash	Freedom of choice regarding the spending of the allowances.	BE
	No freedom of choice regarding the spending of the	/
Combination of both benefits in cash and in kind	Possibility to choose and/or combine and/or substitute both types of benefits	CY, IE, LU, MT, NL, PL, RO, SK, SI, SE, CH, DE
	No possibility to choose and/or combine and/or substitute both types of benefits	BG, CZ, FI, GR, HU, IT, LT, NO, PT, ES, UK, AT, LI

beneficiaries have a claim to help in kind (material services), provided by the state or co-operative institutions. It is remarkable that none of the Member States only allow for allocation of benefits in kind, provided by only state-run or private institutions. The five Member States that only provide benefits in kind (namely Denmark, Estonia, France, Iceland and Latvia) do offer services through the combination of both public and private institutions.

• A good example is Estonia (EE): the global care system provides (only) for benefits in kind. Within the public assistance scheme, beneficiaries are entitled to (1) home care (e.g. cleaning and care of the housing, procurement of food, pharmaceuticals, other necessities and firewood or other fuel, information and assistance in administrative matters), (2) semi-residential care (e.g. day care centres), (3) residential care (e.g. nursing homes, old-age homes, housing for disabled and old-age) and/or (4) other benefits (e.g. technical appliances [incl. prosthesis] financed by the State and com-munity based mental health services

On the other side of the spectrum, there are the schemes that rely wholly on the provision of benefits in cash.

• There is only one example of this technique, namely the Belgian system (BE; Flemish region). The scheme (zorgverzekering) provides a fixed allowance, to spend freely by the beneficiary. Of course, the material care is provided by private service providers, or persons close to the recipient (informal caregiver).

Most Member States have implemented a combination of both benefits in cash and in kind, in most of the cases due to a differentiated approach within the statutory organisation (see table 1 – there is a perceptible correlation (86,67 %) between the disintegrated statutory organisation, and the provision of both benefits in kind and in cash). The existence of both types of benefits is mostly the result of a disintegrated system and spreading over several branches of social security (insurance) and/or public assistance. This may even lead to the impossibility of choosing or substituting between benefits in cash or in kind.

• This may be explained by reference to the Norwegian (NO) LTC-approach. The system (provided piece-meal, mainly through health care legislation) focuses on benefits in kind, provided by formal caregivers (public and private sector), as well as informal caregivers (spouses, partners, parents). Besides the help in kind, there are (minimal) benefits in cash, such as the basic benefit and attendance benefit for disabled persons. Persons entitled to LTC have no option to choose and/or combine both types of benefits. The system also provides a cash benefit for the informal carer, paid by the municipality.

Not all Member States prevent the freedom of choice to combine, mix and/or substitute multiple kinds of benefits.

• The Netherlands (NL) is familiar with a global care system (social security and health care), which provides both benefits in kind and in cash. Although the legislation basically provides for benefits in kind, the insured person can opt not to obtain care provision in kind, but to receive a personal care budget to enable him/her to purchase care independently.

• In Germany (DE), people can freely choose between benefits in kind and cash benefits. Benefits in kind can be obtained from ambulatory or institutional care institutions or care providers that have concluded a contract with the Care Funds. In case the person in need decides to look for the necessary care him- or herself, s/he can receive cash benefits that s/he can freely spend in the way which is most appropriate. A combination of benefits in kind and cash benefits is also possible.

A special attention should also be paid to measures with respect to the care giver. Although in general, unpaid unrecognised family work at home would remain the most important support, several incentives were developed that should support the informal caregivers to stay at home and to take care of their dependants. Linked to this is the situation where the dependant persons needing care from their families act as employers of care assistants and are therefore able to hire and fire, schedule and supervise directly the provi-

sion of care by the consumer or client employed care assistant. The measures taken however vary to a big extent. Some countries foresee no special protection (Hungary, Italy, Netherlands, Lithuania, Portugal, Belgium). This does not immediately imply that these persons are completely unprotected as measures were taken in the framework of labour law that allow people to reconcile work and family life and in particular to take leave to stay at home in order to take care of their sick dependent members of family. In some countries, this will be unpaid leave, while in others a certain income support may be provided.

Other countries foresee a separate benefit, amount of money as compensation for a lost of income of the care provider (UK, EE (benefit however paid to the person in need and not to the caregiver), MT, PL, CH, BG , FI, SK, NO (discretionary amount)), while others consider periods of care as periods of contribution for the pension system (Germany, Spain, CZ) or foresee a more attractive pension (GR) or grant a supplement to the pension (IS). In other countries, by the fact that these persons are employed as employee and receive a contract, they are covered by the social security system (FR, BG, SI).

Kilka uwag wstępnych o systemach opieki długoterminowej

Yves Jorens

STRESZCZENIE: *W artykule autor opisuje rozwiązania w dziedzinie opieki długoterminowej w państwach Unii Europejskiej. Dokonuje analizy różnych definicji opieki długoterminowej w poszczególnych krajach. Omawia rozwiązania organizacyjne, finansowanie oraz zakres przedmiotowy i podmiotowy poszczególnych świadczeń.*