

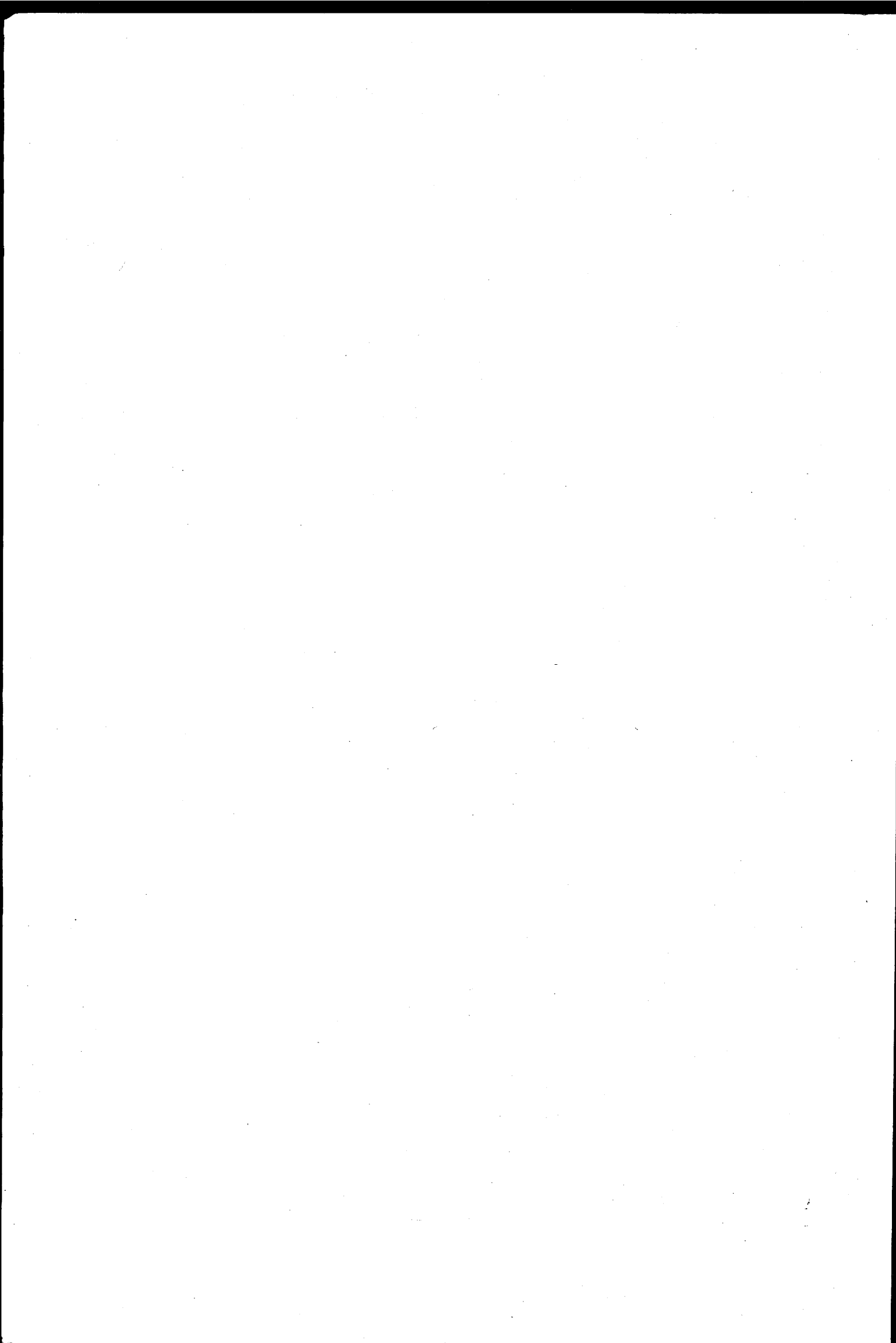
# **Social protection of people with disabilities**

**MISSOC-Info 1/2003**

**Employment & social affairs**



European Commission



# **Social protection of people with disabilities**

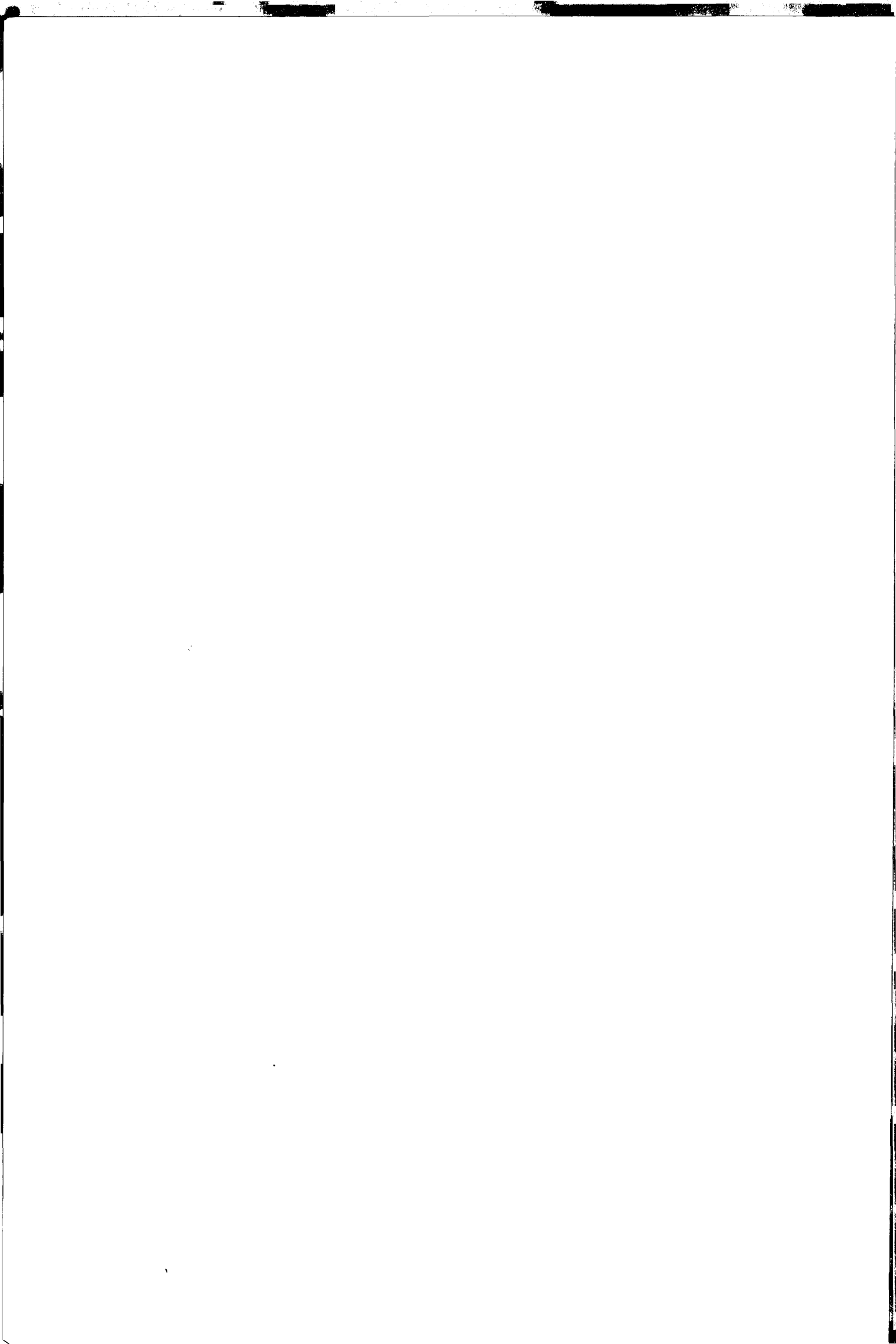
**MISSOC-Info 1/2003**

**Employment & social affairs**

Social security and social integration

**European Commission**  
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## Foreword

2003 is the European Year of People with Disabilities and on this occasion the European Union and its Member States declared their common resolution to completely integrate the disabled in our society.

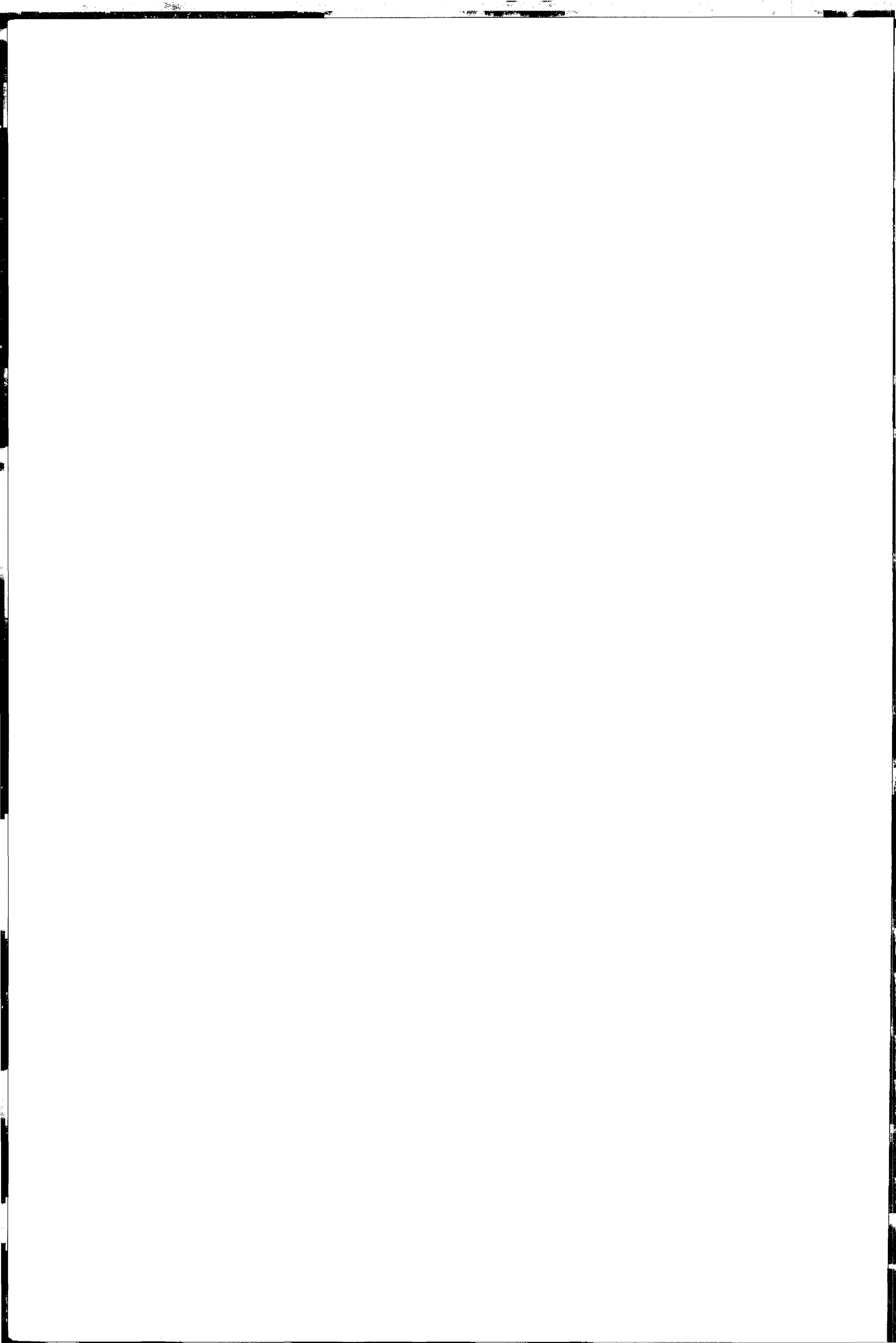
Targets were set such as raising awareness, fighting prejudice and stereotypes, or strengthening the idea of fully inclusive citizenship for people with disabilities; and measures to achieve them, like promoting action which can improve the quality of life and the independence of people with disabilities, supporting network building across the EU and mobilising all available resources at national, regional and local level in each Member State.

In this context, the Commission supported the idea of Missoc network members (Mutual Information System on Social Protection in Europe) to dedicate one specific issue of Missoc-info to the **Social protection of people with disabilities**.

The present publication represents this interesting initiative. The first part offers an overview of last major European trends related to persons with disabilities, including an analysis of concepts and the organisation of rights and benefits; and the second part presents detailed contributions from Missoc partners (the fifteen EU Member States and the four EFTA Countries).

This new working tool will enable readers to have a better knowledge, if not to discover, small and big steps already taken by Europe in the field of social protection of people with disabilities.

**Odile QUINTIN**  
**General Director**



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## **Introduction**

### **1. Policy for disabled people –current trends**

The European Year of People with Disabilities 2003 has been taken as an opportunity to publish a MISSOC-Info that focuses on the subject of the social protection of persons with disabilities. The individual reports provided by the Member States of the EU and EFTA give a comprehensive overview of the different policy approaches in the respective countries. The following overview, which precedes these reports, includes both a brief description of some of the international and European-wide activities and a summary of the national reports on the social protection of people with disabilities.

#### ***1.1 Paradigm change in disability policy***

As early as the Nineties a paradigm change was initiated in legal terms, according to which people with disabilities were no longer considered as recipients of welfare benefits but as equal citizens. This paradigm change constitutes a move away from a medical understanding towards a social understanding of disability, which sees the problems of persons with disabilities in terms of environmental factors rather than qualifying them as the fates of the individuals owing to certain deficits.<sup>1</sup>

The following paper shows that changes in attitude towards the topic of disability have become evident on both a global and a European level. The contents are by no means exhaustive but are solely meant to highlight some important aspects.

#### **United Nations**

On 20 December 1993 the United Nations General Assembly unanimously adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.<sup>2</sup> In accordance with Rule 15 of these Standard Rules, the Member States of the United Nations are under the obligation to eliminate any discriminatory provisions and create the legal bases for measures to achieve the equality of persons with disabilities.

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<sup>1</sup> See Degener, Theresia (2000) : Antidiscrimination Legislation for Persons with Disabilities worldwide - an Overview (Original: *Antidiskriminierungsgesetze für Behinderte weltweit – ein Überblick*). Conference on: Antidiscrimination Legislation Now (*Gleichstellungsgesetze jetzt*) in Düsseldorf, 20 to 21 October 2000.

<sup>2</sup> <http://www.un.org/esa/socdev/enable/dissre00.htm>

### World Health Organization (WHO)

The new version of the International Classification of Functioning, Disability and Health (ICF) of the World Health Organization (WHO) refers to the "Standard Rules on the Equalization of Opportunities for Persons with Disabilities" of the United Nations. Besides the components of body functions and structures as well as activities and participation, the ICF also includes environmental and person-related factors.<sup>3</sup> In this context environmental factors can either facilitate or impede integration, and the very fact that this component was expressly included shows that a change in attitude has taken place which constitutes a move towards a social understanding of disability.

The inclusion of person-related factors emphasizes the social dimension, since the same disability may have different effects depending on the occupation. This means, for example, that for the majority of people the amputation of one's little finger would not represent a disability in the sense of a social impairment. For a pianist, on the other hand, this would mean he/she would no longer be able to work in his/her profession due to this very impairment.

### The Treaty of Amsterdam

With respect to equality of a person with a disability reference is often made to the Treaty of Amsterdam, Article 13 of which includes the prohibition of discrimination based on disability.

### Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council

of 20 December 1996 on equality of opportunity for people with disabilities<sup>4</sup>

Likewise with reference to the aforementioned Standard Rules of the United Nations, the European Community adopted the Resolution on equality of opportunity for people with disabilities, which includes, besides the 12-point justification for the Resolution, the following requests:

- to avoid or eliminate any form of negative discrimination on the sole grounds of disability
- to develop necessary policies on the equalization of opportunities
- to take account of the orientations set out in the corresponding national policies for the participation of persons with disabilities in society (request to the Member States)

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<sup>3</sup> The ICF does not classify person-related factors due to the socio-cultural differences between the countries; these have, however, been included in the systematic overview for reasons of completeness.

<sup>4</sup> [http://europa.eu.int/comm/employment\\_social/soc-prot/disable/com406/res\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/disable/com406/res_en.htm)

- to take account of the principles to create equal opportunities for persons with disabilities in any relevant proposal on Community legislation, programmes or initiatives (invitation to the Commission)
- to promote the exchange of useful information and experience especially concerning innovative policies and good practice (invitation to the Commission)
- to contribute to the realization of the principles set out in the Resolution in the framework of their policies and activities (invitation to other Community institutions and organs).

*The European Union Disability Strategy<sup>5</sup> (Equality of Opportunity for People with Disabilities – A new Community Disability Strategy*

On the basis of the requests formulated by the Resolution of 20 December 1996 on equality of opportunity for people with disabilities (see above) the following strategy was developed: *Equality of Opportunity for People with Disabilities – A new Community Disability Strategy 1996*. This strategy focussed on the following aspects in particular:

- Strengthening the co-operation between and with the Member States:  
The *High Level Group of Member States Representatives on Disability* has the special task of implementing the objectives set out in the Resolution of 20 December 1996 and comparing the different approaches of practical implementation.
- Increasing the participation of people with disabilities:  
In order to improve the participation of people with disabilities in a comprehensive sense, i.e. also in the development of socio-political strategies, disability organizations have been included to a larger extent, for example the umbrella organization for disability organizations in Europe, the *European Disability Forum (Europäisches Forum für behinderte Menschen, Forum Européen des Personnes Handicappées)*.  
In addition, the *Social Partners' Joint Declaration on the Employment of People with Disabilities* is a further contribution towards the improvement of the participation of people with disabilities in employment.
- Mainstreaming disability in political contexts:  
The aim here is the full participation of persons with disabilities in all aspects of life. For this reason the Commission has stipulated that disability be regarded as a mainstream topic in all its programmes and projects.

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<sup>5</sup> [http://europa.eu.int/comm/employment\\_social/soc-prot/disable/strategy\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/disable/strategy_en.htm)

## **1.2 The European Year of People with Disabilities 2003**

The United Nations Resolution of 20 December 1993 on the Equalization of Opportunities for Persons with Disabilities is paid tribute to on the occasion of its 10th anniversary by the Resolution of the Council of the European Union of 3 December 2001, which proclaimed the year 2003 to be the European Year of People with Disabilities (EYPD). The objectives of the EYPD 2003 are formulated in Article 2 of the Resolution<sup>6</sup> and emphasise in particular the importance of raising awareness of the rights of people with disabilities and of the multiple forms of discrimination. In addition, mutual acceptance is to be improved by way of reflection, information, communication and targeted public relations work.

In the preliminary stages of the EYPD 2003 the *Madrid Declaration* "Non discrimination plus positive action results in social inclusion" was proclaimed on the occasion of the European Congress on People with Disability in Madrid in March 2002. Starting from the current situation of many people with disabilities in Europe who often see themselves confronted with discrimination, poverty and social exclusion, the declaration outlines a vision for the full participation of people with disabilities and includes a programme for making this vision a reality.

In the course of the EYPD 2003 numerous programmes, events and festivities of all different kinds take place at the national and local level. These events are organized by people with disabilities and disability organizations and funded by the Commission.

## **2. Social protection for people with disabilities**

Employment constitutes the main approach for the integration of people with disabilities. The significance of this aspect is undisputed, since having a job in a performance-oriented and knowledge-based society enables social integration to a large extent. However, many people with disabilities are unable to hold regular jobs; the field of social protection thus constitutes a further important component of social integration for people with disabilities. The following paragraphs provide an overview of the social protection policies that exist in the different countries.

### **2.1 Definitions and tasks**

Just as there are many different causes and forms of disability and resulting benefits, numerous terms are used to describe the different phenomena. There are only a few countries that explicitly have a standard term for disability in the sense of a general, comprehensive description, as for example in Germany, Spain, Italy or in Portugal.

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<sup>6</sup> [http://europa.eu.int/comm/employment\\_social/soc-prot/disable/com271/comfinal\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/disable/com271/comfinal_en.htm)

Furthermore, there are comprehensive descriptions of disability in the context of anti-discrimination legislation. The Disability Discrimination Act in the United Kingdom, for example, provides a comprehensive description. In this respect, however, it is pointed out that, due to the different individual aims, there is no intention to standardize the different definitions that can be derived from other acts. In relation to the policies for the elimination of inequalities, a comprehensive description of disability was included in the Swiss Federal Act on the Elimination of Inequalities for People with Disabilities [*BehiG*], which has not yet come into effect.

In accordance with these standardized terms, a disability occurs in the event of functional or activity impairment and in the event of any other factor impairing a person's participation in society. In this context reference is made to the "normal" degree of activity or participation with respect to age and gender or the predominant social and cultural conditions.

The majority of countries do not have such standardized definitions in the sense of comprehensive descriptions, but rather mention the different definitions in the sense of prerequisites necessary for benefit entitlements that can be found in the various legal texts.

As a rule three different forms of impairment are differentiated between in the different countries; these include physical, psychological and mental impairment. Sometimes other forms of impairment are mentioned, such as the sensory or psychosocial, as, for example, in Luxembourg. In this context an "impairment" is described as the deviation from a defined state of health, the loss of skills, a deficit or as an anomaly.

The degree of disability and the living situation (at home, in a home or in sheltered housing) of people with disabilities also serve as a criterion for differentiation in some countries.

## **2.2 The Shaping of Disability Legislation**

The countries' disability legislation is generally regulated in several, in some cases numerous, laws relating to benefits (e.g. Denmark, France, Iceland, Liechtenstein, Portugal, Finland). France, the Netherlands and Finland explicitly describe disability policy legislation or the rehabilitation system as "complex".

In relation to this Luxembourg refers to the term "mainstreaming" to illustrate the fact that policies in favour of people with disabilities relate to a host of different areas and policy areas. Austria, for its part, describes its disability legislation as a "cross-sectional issue".

However, Italy, Ireland, Portugal or Spain, for example, have specific comprehensive disability legislation.

### Criteria for describing disability

Correspondingly, there are numerous criteria for certain claims in the different legal documents and provisions, some of which are quoted in the following paragraph:

First of all the expected *duration* of the impairment serves as an important criterion for the differentiation of disability, on the one hand, as a sickness condition or as a consequence of an accident on the other hand. In some countries time limits are explicitly mentioned (generally speaking six months), whilst other countries refer to presumably permanent or prolonged disability. Greece deviates from this pattern insofar as the same laws relating to benefits apply to the presumably permanently disabled people as well as to people who are temporarily impaired, for instance due to disease or accident.

In some countries different laws relating to benefits apply depending on the *cause* or the *type* of disability (e.g. France, Luxembourg, Finland). In this context, two further criteria are the *degree of disability* or the *degree of invalidity* (e.g. Denmark, Germany, France, Liechtenstein, Luxembourg, Finland) and the *age* of the person with a disability (e.g. Ireland, Luxembourg, Finland). In relation to this, a criterion given for laws relating to benefits, e.g. in Belgium and in France, is the *decrease in or the loss of autonomy amongst old age persons*.

Other criteria generally refer to *impaired physical and mental abilities* (e.g. Denmark, Belgium, France, Luxembourg) or the impaired ability *to carry out everyday tasks*, which also include impaired mobility or the need for assistance in the form of a companion (e.g. Liechtenstein, Luxembourg, United Kingdom).

Incapacity [unable to work] or earning incapacity [disabled] as a criterion for disability plays an important role in many countries (e.g. Denmark, France, Liechtenstein, Luxembourg, Norway, Switzerland, Finland, United Kingdom). Often there is a differentiation between pensions for persons incapable of gainful employment/invalids, on the one hand, and allowances for disabled persons on the other hand (e.g. Denmark, Norway, France, Liechtenstein). In this context occupational training or qualification prior to the occurrence of the disability is to be mentioned as a criterion.

Some countries explicitly refer to the consequences of a disability in their laws relating to benefits. Denmark, Portugal or Switzerland, for example, particularly emphasize this aspect. The Danish system, for example, refers to a "social model" and takes into account the overall situation of the disabled person and not the different categories of disability. In Portugal, for example, the entitlement to benefits is not justified on the grounds of the different forms of disability, but on the grounds of an impaired situation. Switzerland's Act "BehiG", which has not yet come into effect, aims, amongst other things, at influencing environmental factors which are meant to benefit not only disabled persons. The Act

takes into consideration the consequences of a disability in its interaction with the environment.

In the other countries the awarding of benefits is based on different factors, and besides the aforementioned consequences resulting from the disability, the cause or the type of the disability (causality) or the age or education (conditions) are also taken into account.

### Organization

In most countries the Ministries of Social Affairs are the competent authorities responsible for policy for people with disabilities. In addition, often the Ministry of Labour is responsible for occupational rehabilitation.

In some countries disability policy is essentially organized at the federal level, as is the case in Belgium, Germany, Austria or in Switzerland. Even if in these countries the respective Federation bears the overall responsibility and legislative power, certain aspects of disability aid and rehabilitation remain within the realm of responsibility of the Federal State and Federal Acts have been adopted. In other words there are separate realms of competence.

The benefits are managed either first and foremost at the local or regional level or at state level, depending on the benefit type.

- Insurance benefits such as invalidity pensions and, in relation to this, occupational rehabilitation benefits are normally managed and granted by state institutions in the countries. Exceptions are Liechtenstein and Switzerland, which, for example, have entrusted accident insurance and health insurance to private, government-licensed organizations.
- In most countries the occupational reintegration of unemployed persons with disabilities is managed by the employment offices at the local level.
- Medical rehabilitation benefits for disabled persons are either within the category of health or accident insurance (e.g. Germany, Liechtenstein, Luxembourg) or are provided by the local public health services (e.g. Denmark, Finland).
- Solidarity benefits in the form of the provision of social services or, in needy cases, the payment of financial allowances are mainly provided at the regional or local level.

Thus different rehabilitation or implementation bodies are responsible for the different types of benefit granted. These can be national institutions or corporations under public law (in the case of insurance benefits) or public bodies, in particular at the local level, such as employment offices or social welfare offices (for solidarity benefits). Often health or social services are also provided by private organizations on a contractual basis.

### Coordination and cooperation

Due to the aforementioned complexity of disability legislation, some countries have adopted laws regulating the specific social law provisions in favour of people with disabilities, coordinating benefits, clarifying realms of competence and regulating cooperation. Such laws function as brackets for the laws relating to benefits (e.g. Germany, Spain, France, Liechtenstein, Luxembourg, Austria or Finland).

In the Netherlands the competent Ministry of Health and Welfare *VWS* cooperates in a committee with four other Ministries. The committee advises the shaping, development and coordination of the Government disability policy. In Portugal the National Secretariat for Rehabilitation and Integration, which was established within the Ministry of Social Protection and Labour, coordinates and develops the national policies on the prevention, rehabilitation and integration of people with disabilities.

Belgium and Iceland, on the other hand, have not explicitly established formal procedures for the coordination of the different policies for persons with disabilities. In Belgium, however, different informal measures exist for a coherent disability policy, whereas in Iceland formal cooperation between the two ministries involved is not considered necessary, since each of them is responsible for different and separate areas.

Liechtenstein mentions the problem of overlapping benefit areas, which can result in double benefits or delays owing to the need for clarification as to relevant realms of competence before a benefit can be granted. It can be assumed that similar secondary phenomena in complex and structured systems will exist in some other countries, too. However, countries such as Denmark or Iceland explicitly rule out these problems.

### **2.3 Benefits**

The complex support structures that have been developed in the countries are reflected in the large variety of benefits. At this point some core issues will be elaborated which will serve as an overview without making detailed reference to the individual benefits in the respective countries. In this context the following types of benefits can be differentiated: benefits to secure one's income, for the compensation of special expenses and for rehabilitation.

#### Income maintenance

Income maintenance represents a monetary benefit and is granted, on the one hand, to supplement the salary of disabled employees (e.g. France) or to secure income (temporarily) in the form of a transitional allowance for the duration of rehabilitation measures (e.g. Germany, Iceland, Switzerland, Finland).



Disabled people that are not or no longer employable on the labour market due to their given disabilities receive a permanent allowance to secure their income. In this relation both insurance benefits and benefits granted under schemes for guaranteeing sufficient resources apply. Some countries explicitly state that an important prerequisite for a permanent pension is that all possible ways to achieve (re-)integration must be exhausted (e.g. Denmark, Switzerland, Finland). In Norway, one suggestion is to divide the pension for disabled persons into a permanent and temporary allowance. The aforementioned temporary allowance is granted if there is any prospect of returning to work.

In some countries the guaranteed minimum resources are linked to pro-active measures. In Denmark, in Italy or in Luxembourg, for example, the individual's own efforts to secure his/ her own livelihood by way of appropriate work are quoted as a prerequisite for receiving benefits under the guaranteed minimum resources scheme or social pension scheme.

### Compensation

In many countries compensatory benefits are granted for specific expenses such as pharmaceuticals, medicinal technology, appliances, (e.g. Denmark, Iceland, Switzerland, Finland, Sweden) or to compensate the costs of necessary support in the form of care allowances by third persons (e.g. Switzerland, United Kingdom).

Such compensatory benefits are often linked to specific conditions: In Spain, for example, mobility allowance and compensation for transport costs depend on the degree of disability and the income. In Norway the basic benefit (for extra expenses) and the attendance benefit is reduced if received in addition to a National Insurance pension. In Switzerland invalidity pensions, which are meant to cover the basic needs of the insured persons, are supplemented in relation to the income by supplementary benefits that are provided by the cantons. In Iceland invalidity allowance, which is granted as a supplement to the invalidity pension (both are indexed to a specific degree of disability), depends on income. In France, too, the compensatory allowance is set off against other allowances or pensions. Finally, in Portugal, for example, the Special Education Allowance is a variable, income-related amount.

Person-related budgets represent a special form of compensatory benefit which allow people to take on the responsibility of organizing aids and appliances and services themselves. In Belgium and in the Netherlands, for example, a personal budget is offered on request or to specific groups of persons.

### Rehabilitation

Numerous benefits are granted in relation to the rehabilitation or (re-) integration of disabled persons. In relation to this, some countries differentiate between

occupational and medical rehabilitation, whilst others distinguish between occupational, medical and social rehabilitation.

The significance of occupational rehabilitation is particularly emphasized and focuses on the following aspects:

- Work training, in particular training opportunities, courses and sheltered employment,
- Support for workplace adjustment measures,
- Specific advice to both the recruiting companies and the persons concerned and
- Subsidies for employers who recruit and employ disabled persons as well as a quota system for companies to employ a certain percentage of disabled employees (male/female).

Medical rehabilitation is the responsibility of either health, accident or long-term care insurance providers or is assumed by the public health services. Tasks involved in medical rehabilitation include the usual medical benefits such as medical treatment, hospital transport and pharmaceuticals and the provision of aids and appliances and specific therapy and training.

Finally, social rehabilitation benefits can be regarded as specific benefits (in kind), such as care and counselling, which improve communication with the environment, the creation of possibilities to enable people with disabilities to be largely self-sufficient and the provision of communication aids and appliances. On the other hand, social rehabilitation can be understood as a generic term for the aforementioned different areas. This includes both benefits for income maintenance, compensation for specific tasks and occupational rehabilitation benefits.

#### ***2.4 Participation in society***

During the European Year of People with Disabilities the central issue is participation in society and equal opportunities for people with disabilities. This aim is supported by way of corresponding legal framework conditions, on the one hand, and targeted measures and reforms on the other hand.

##### *Legal framework conditions*

As a rule the constitutions of the countries explicitly include a prohibition on discrimination amongst other things on the grounds of disability. In Luxembourg or Finland, for example, this general prohibition is supported by sanctions provided for in criminal legislation (in the Netherlands there are plans to introduce such sanctions). In addition, protection against the discrimination of persons with disabilities can be achieved by way of specific legal acts in relation to the prohibition of discrimination, such as already exist in France or in the United Kingdom or are being prepared, Belgium, Spain or Norway. In relation to this, Iceland, for exam-

ple, refers to its Disability Act of 1992, which mainstreams the principle of anti-discrimination.

Moreover, in Germany, Ireland or Switzerland, for example, there are specific equal opportunities acts for persons with disabilities. In Austria a similar act is under preparation. The new constitution of Greece, which came about in 2001, for its part includes a reference to the State's duty to care for disabled persons.

Sweden, for example, adopted a national action plan in 2000 which precisely stipulates disability policy objectives.

### Measures

The legal provisions are meant to shape access to education and employment, services and goods, buildings and transportation in such a way that access is largely barrier-free or equal access is guaranteed for all.

In this context, reference is made to an approach that considers disability as a mainstream issue in all areas (mainstreaming). Furthermore, particular emphasis is given to the normalization approach; this approach involves measures to ensure the following:

- inclusion in the labour market
- the removal of barriers in the public area
- the implementation of the principle "ambulatory care over in-patient care" and the creation of possibilities for living in small units, and finally
- better quality social services by way of standards and certifications for example.

The different countries have different focuses in implementing these measures, with the employment issue again playing a predominant role.

In summary it can be said that the issue of disability does not only constitute a priority area of activity against the background of the European Year of People with Disabilities. This is reflected both in a large variety of benefits and action programmes and in campaigns to raise awareness amongst the public and increase the awareness to the needs of people with disabilities. Many of the measures that have been initiated in the countries are to be continued over the next few years, which shows that the participation of persons with disabilities will remain a predominant issue beyond the European Year.

Heike Engel  
Frank Pfeuffer

# BELGIUM

## A. Definition

Belgium is a federal state composed of Communities (French-, Flemish- and German-speaking) and Regions (the Regions of Flanders, Wallonia and Brussels Capital). Under the Law of 8 August 1980 setting out institutional reforms, the Communities (French-, Flemish- and German-speaking) are responsible for policy for disabled people, including their vocational training, retraining and redeployment, with the exception of the rules on and financing of benefits for disabled people, including individual dossiers, and the rules governing the finance awarded to employers who employ disabled people under work programmes for disabled workers, for which the federal state is responsible. Some powers vested in the French-speaking Community, including policy for disabled people, have been transferred to the Walloon Region and to the French Community Commission of the Brussels Capital Region.

The main bodies responsible for policy for disabled people are the *Vlaams Fonds voor Sociale Integratie van Personen met een Handicap* (Flemish Fund for the Social Integration of Disabled Persons), the *Agence wallonne pour l'intégration des personnes handicapées* (Walloon Agency for the Integration of Disabled Persons) and the *Dienststelle der deutschsprachige Gemeinschaft für Personen mit einer Behinderung* (Office of the German-speaking Community for Disabled Persons). The federal state is responsible for provisions on social security, benefits for the disabled and some aspects of work programmes for disabled people.

There is no single definition of disability in Belgium. Disabilities are defined differently depending on the benefit awarded to the disabled person and the body awarding the benefit. Only the most important of the benefits paid to disabled people by Belgian institutions are examined here.

The Flemish Fund for the Social Integration of Disabled Persons awards aid to people who face problems of social integration as a result of a disability. This disability may be physical, mental or sensory and the restrictions that it entails must be severe and long term.

Disabled people wishing to apply for the aid awarded by the Walloon Agency for the Integration of Disabled Persons must have their capacity for social or occupational integration severely restricted by an impairment of their mental, sensory or physical faculties that requires society to intervene.

Any person whose capacity for social and/or occupational integration is severely restricted by an impairment or reduction of their physical and/or mental capacity is eligible for the aid awarded by the Office of French-speaking Brussels for Disabled Persons.

The Office of the German-speaking Community for Disabled Persons deals with any person whose socio-occupational integration is restricted by an impairment of their mental, physical or sensory faculties.

The *allocation de remplacement de revenu* (income replacement benefit) is awarded to any person aged under 65 who, as a result of a disability, has had their earning capacity reduced to one third or less of the income that a non-disabled person could earn from an occupation in the general labour market. The *allocation d'intégration* (integration benefit) is awarded to disabled people aged under 65 who, because their independence has been restricted, must bear additional costs for their integration into social life. People aged over 65 whose independence is restricted are eligible for the *allocation pour l'aide aux personnes âgées* (elderly persons' attendance benefit).

Any disabled child aged from 0 to 21 is eligible, as well as for the normal family allowance, for an *allocation familiale supplémentaire* (supplementary family allowance) if they suffer from a physical and/or mental incapacity of at least 66%.

## **B. Organisation of the legislation for disabled persons**

There is no single law on disabled people. As mentioned above, policy for disabled people has been federalised, although the federal state has retained powers over some aspects of this policy. Each body has exclusive powers over the areas attributed to it by the Constitution. The federal state can take action only in the areas of responsibility attributed to federal bodies, and vice versa. The Constitution sets out mechanisms to prevent and resolve conflicts of competence between the various levels of power in Belgium.

There is no formal procedure for the coordination of the various policies for disabled people. Various methods are nevertheless used to ensure that policy for disabled people in Belgium is coherent. Joint ministerial conferences, bringing together the various ministers responsible for particular areas, are regularly organised. There are also informal contacts between authorities and working parties are regularly set up to study aspects of legislation on disabled people.

## **C. Benefits in the various fields of social security**

### **a) Vlaams Fonds voor Sociale Integratie van Personen met een Handicap**

The Flemish Fund for the Social Integration of Disabled Persons awards aid to people who face problems of social integration as a result of a disability. This disability may be physical, mental or sensory and the restrictions that it entails must be severe and long term. People applying for assistance from the Fund must be aged under 65 and resident in Flanders.

The Flemish Fund awards financial assistance in the following areas:

- it approves and subsidises facilities which offer, on a collective basis, assistance for disabled people. Such services include home assistance services, services assisting disabled people who wish to live independently, semi-residential centres, residential care centres, etc.;
- it awards aid to vocational training services for disabled people;
- it awards subsidies to employers wishing to hire disabled people;
- when a disabled person wishes to live at home, it may refund the costs of any adaptation and technical aids;
- a personal assistance budget may be awarded to disabled people wishing to organise and fund personal assistance themselves.

***b) Agence wallonne pour l'intégration des personnes handicapées***

Disabled people wishing to receive the aid awarded by the Walloon Agency for the Integration of the Disabled (AWIPH) must satisfy the following conditions:

- they must be resident in the area of the French-speaking region;
- they must not have reached the age of 65 when they submit their initial request for assistance;
- their capacity for social or occupational integration must be severely restricted as a result of an impairment of their mental, sensory or physical faculties that requires society to intervene;
- they must be Belgian nationals, or have stateless or recognised refugee status or be a worker or the child of a worker from a Member State of the European Union.

The AWIPH offers disabled people:

- individual or collective benefits provided by services and facilities offering:
- appropriate care and services enabling disabled people to continue to live at home;
- functional rehabilitation and technical aids fostering greater independence;
- social, medical, paramedical or psychological care;
- appropriate education, re-education or vocational training;
- optimum occupational integration;
- high-quality reception and accommodation in one of the following services or facilities:
  - early assistance services;
  - care services;

- services offering assistance with daily life;
- functional rehabilitation centres;
- specialist vocational training centres;
- sheltered working enterprises;
- day centres for young people and for adults;
- residential centres for young people and adults;
- residential night-care centres for adults;
- centres helping disabled people to make the transition to normal life;
- short-stay centres;
- family placement services.

***c) Service bruxellois francophone des personnes handicapées***

Any person aged less than 65 whose capacity for social and/or occupational integration has been severely restricted by an impairment or reduction of their physical and/or mental capacity may apply to the Office of French-speaking Brussels for Disabled Persons. Disabled people wishing to apply for the various benefits awarded by the Service must apply to be admitted.

The Office draws up a global process for disabled people's social and occupational integration and ensures that their friends and relations or, failing them, the centres, enterprises and services dealing with disabled people, can help them to put this process into practice.

It advises disabled people, their friends and relations and the centres, enterprises and services dealing with them with a view to promoting their integration into schools, their training, rehabilitation and vocational re-education and ensures that the disabled people concerned receive specialist guidance.

It approves and subsidises functional rehabilitation centres.

It promotes vocational training and rehabilitation and occupational integration of disabled people by approving or setting up specialist guidance services and educational support services and also by creating bridges with the normal education and training system.

It awards benefits and supplementary pay throughout the adaptation to employment of disabled people who have concluded occupational adaptation contracts.

It grants assistance to employers employing disabled people.

It promotes recruitment into normal or sheltered work and helps with the integration of disabled people.

It bears all or part of the travel and subsistence costs that disabled people incur in connection with or outside their occupational integration.

It provides disabled people with any help that they need in connection with or outside their occupational integration.

It approves and subsidises day care and accommodation centres for children and adults as well as family placement.

***d) Dienststelle der deutschsprachige Gemeinschaft für Personen mit einer Behinderung***

Any disabled person, i.e. any person whose socio-occupational integration is restricted because their mental, physical or sensory faculties are impaired may apply to the Office of the German-speaking Community for Disabled Persons.

Applications for registration may be submitted by any disabled person, providing that:

- they are resident in the German-speaking Community and
- they are nationals of an EU Member State, or have been continuously resident in Belgium for at least five years, or can prove that they have been living in Belgium for at least 10 years. Stateless persons, recognised refugees and other people who do not satisfy the above conditions must have been continuously resident in Belgium for at least two years and must agree to take part in school, social and/or occupational integration measures.

A programme of personal assistance and support is drawn up in line with the applicant's specific needs, interests and life plans. People who are registered obtain the services that they need by a decision of the Office. Disabled people and their friends and relations receive guidance, advice and support in order to ensure optimum socio-occupational integration.

The Office awards grants for early assistance for young children who are disabled or whose development is backward and for their families. A service offering families support for everyday life and advice on educational questions is also available for families with disabled children aged between 6 and 18.

The Office offers various housing and accommodation options in the form of sheltered housing, housing resources and short-stay and care homes.

The "Start-Service" offers vocational guidance for disabled people. It awards grants when capacity is reduced and provides support for training, vocational rehabilitation and employment measures in the open labour market.

The Office offers employment in day centres and has a service matching leisure supply and demand for disabled people.



## **D. Participation in social life**

Belgium as yet has no anti-discrimination law for disabled people. Various regulations do, however, promote disabled people's participation and integration into society.

The integration benefit and the elderly person's attendance benefit are awarded to people whose independence has been restricted and who therefore have to pay additional costs for their integration into society. When assessing the degree of independence, account is taken of:

- the ability to move;
- the ability to eat or to prepare food;
- the ability to attend to personal hygiene and to get dressed;
- the ability to clean the home and carry out household tasks;
- the ability to live without supervision, to be aware of risks and to be able to prevent them;
- the ability to communicate and to enter into social contacts.

The various Community and Regional bodies responsible for the social and occupational integration of disabled people also award aid to promote the participation of such people in society (see above).

Lastly, there is a draft law whose purpose is to combat any discrimination on grounds of disability in particular. Under this draft, any discrimination in respect of the supply of goods and services, employment access conditions, written publications or access to and participation in an economic, social, cultural or political activity open to the public is prohibited. This draft law should be adopted in 2003.

## **DENMARK**

### **A. Definition**

The International Classification of Functioning, Disability and Health which is a revision of the initial text published in 1980 by the WHO uses the term "disability" to designate impairments, activity limitations and participation restrictions.

An "activity" is defined in this classification as the execution of a task or an action by a person.

"Participation" means involvement in a life situation.

The state of functioning and disability of a person is the result of the dynamic interaction between their health problem and personal and environmental factors. The term disability always involves the relationship between a person and their individual and social environment.

Two opposing models have been proposed to understand and explain disability and functioning.

In the medical model, disability is seen as a personal problem, directly caused by disease, trauma or other health problem. The disability can be treated by curing or rehabilitating the individual or by changing their behaviour.

In the social model, however, disability is seen chiefly as a problem created by society and raises the question of people's full integration into society. The disability is not a personal attribute, but rather a complex set of situations, many of which are created by the social environment. If the problem is to be resolved, measures need to be taken in terms of social action, and it is society's collective responsibility to make the changes needed to enable disabled people to play a full part in all aspects of social life.

National legislation on disabled people may be framed in two different ways. The rights and duties of disabled people may, as in Denmark, be incorporated into general legislation or may be set out in exceptional legislation.

#### DANISH LEGISLATION

The trend, nowadays typical, to attach more importance to environmental and social factors and less importance to medical factors is also true of Danish legislation.

In the law in force on the early retirement pension (invalidity pension) and in the law on insurance against accidents at work and occupational diseases, medical assessment tends in practice to take precedence over social factors and assessment of potential for activation.

This practice is also reflected by the fact that benefits are graduated under both laws depending on the measurement of the degree of incapacity.

A serious and permanent reduction of capacity for work, caused chiefly by disease or impairments (physical or psychological functions), entitles people to an early pension.

This criterion is now felt, however, to be inappropriate, since it may often run counter to rehabilitation because it encourages pensioners to remain inactive instead of drawing on their remaining capacity for work, and the new law on the early pension, which came into force on 1 January 2003, therefore uses a new criterion: capacity for work in the sense of satisfying the requirements of the labour market so that people can provide for their needs through their own work.

People who can work successfully in the labour market, possibly with the support provided by social and other legislation, for instance the legislation on flexible jobs, are not entitled to the early pension.

In order to apply this criterion of pension entitlement, it is necessary to be able to define some factors and concrete functions of the labour market, determining the new notion of capacity for work, which therefore play a deciding role in assessment of pension entitlement.

The new law, which involves a major simplification of the legislation on early pensions in that from now on there will be only one level of benefit corresponding to the amount of the daily allowances in the case of sickness or unemployment, makes up for the loss of income from work and no more than that loss.

Compensation for loss of earnings has thus been separated from compensation for the additional expenses arising from a disability.

Compensation for disabled people for the expenses that they incur as a result of their disability is governed by the law on social services. The purpose of the aid awarded under this law is to prevent the situation of disabled people from worsening and to improve their functioning and participation in daily life.

The criterion used by the law on social services to define a disabled person parallels the criterion of the UN standard rules on the equalisation of opportunities for persons with disabilities in which a disability is the relationship between a person with impairments and their physical and social environment. The notion of disability is thus becoming a dynamic notion given that the limits for people with impairments change as society evolves.

As the Danish system is somewhat akin to the "social model", in which it is the capacity (or incapacity) of the disabled person, i.e. his or her overall situation, that is taken into account and not the different categories of disability, no distinction is generally made between the different forms of disability in Danish legislation.

Nevertheless, in the law on the early pension, which remained in force up to 1 January 2003, a supplement to the early pension, the external attendance allowance, could be awarded in cases of blindness or acute myopia.

Similarly, the law on insurance against accidents at work and occupational diseases covers, in addition to the occupational diseases included in a list, children's congenital diseases and lesions resulting from the work of their mother or father.

## **B. Organisation of the legislation for disabled persons**

The three laws outlined above, i.e. the law on the social pension, the law on social services and the law on insurance against accidents at work and occupational diseases, contain most of the legislative provisions on disabled people.

The first two laws cover the population as a whole, while the third regulates compulsory insurance covering all employees and some self-employed workers (fisheries and maritime sectors), as well as trainees and students who, during their education or training, are in training facilities or at workplaces.

Provisions for disabled people are contained in other legislation, for instance the provisions on flexible jobs or the adaptation of public transport.

The benefits and services provided by the law on the early pension and by the law on social services are all financed from taxation and administered by the municipal and county authorities.

65% of the costs of the early pension are borne by these local authorities and 35% by the state.

The costs of benefits and services provided by local authorities under the law on social services are borne by the municipal or county authorities administering the benefit in question.

The county authorities provide housing for some groups of disabled people, either in care homes, or in flats or communal living arrangements for groups of disabled people living together.

The county authorities also administer sheltered jobs and some forms of activation of disabled people.

The county authorities also finance some large-scale benefits in kind, such as computer equipment or the purchase of a car adapted to the disabled person's needs.

It is often the municipal authority that proposes that a particular benefit should be awarded to a disabled person to the county authority. There is no risk of double benefits in the Danish "single-strand" system".

The wide range of other benefits set out in the law on social services is administered and financed by the municipal authorities.

## **C. Benefits in the various fields of social security**

### ***The law on the early pension***

The early pension, under the regulations in force up to 1 January 2003 (and, thereafter, for people in receipt of a pension prior to that date) is divided into three levels depending on the degree of incapacity of the applicant for the pension (incapacity of 100%, 66% and 50%).

This level is set, as mentioned above, in accordance with a mixture of social and individual factors where the tendency is to attach more importance to individual medical factors.

As the pension is financed from taxation, it is not related to prior employment or prior contribution payments. A pension applicant who has never worked has the same entitlement to the early pension as an employee or self-employed person.

Applicants must have been resident in Denmark for three years to be eligible for the early pension although, in the EU, this condition can obviously be satisfied by combining periods of insurance or residence in other Member States.

The pension benefits for the three levels are:

Level 1 (100% incapacity) – DKK 171 528 per annum for people living alone and DKK 142 428 for others;

Level 2 (66% incapacity) – DKK 135 132 per annum for people living alone and DKK 106 032 per annum for others;

Level 3 (50% incapacity) - DKK 122 556 per annum for people living alone and DKK 93 456 per annum for others.

The above amounts include an amount covering the additional costs resulting from the disability. The early pension therefore covers both loss of earnings and these additional costs or expenses.

The new law, which came into force on 1 January 2003, only covers, however, the loss of earnings of people who will never be able to support themselves through work. Their additional costs must be covered by one of the benefits set out in the law on social services: the supplementary/additional costs allowance.

The amount of the benefit under the new law is DKK 162 036 per annum for people living alone and DKK 137 724 per annum for others.

#### *Rehabilitation and re-education*

The early retirement pension is the final resort for a disabled person. The pension is awarded only when all other attempts to activate, rehabilitate or re-educate the person have failed.

Medical rehabilitation is provided by the public health service and is a free service for all Danish inhabitants.

Occupational rehabilitation is governed by the law on an active social policy.

Local authorities must offer occupational rehabilitation to people whose ability to work is restricted, but who may be rehabilitated.

The local authority draws up, in conjunction with the person in question, an individual plan for this rehabilitation which must be followed to the letter; if it is not, the process is terminated.

The rehabilitation plan may contain: testing of the capacity for work of the person to be rehabilitated, instruction, any necessary preliminary teaching, courses and projects, training or apprenticeship. The rehabilitation plan very often includes training.

Rehabilitation plans may last a maximum of five years although, in cases where higher education has been started, the period may be extended up to the end of this education.

The rehabilitation benefit, corresponding to the daily unemployment allowances, is therefore very generous. There is no reduction to take account of the earnings of a spouse and it may be supplemented when the costs of the person to be rehabilitated, for instance travel costs, are particularly high as a result of their disability.

Some income, for instance a wage paid during rehabilitation or apprenticeship taking place in an enterprise and any arrears of pensions or compensation paid under insurance against accidents at work and occupational diseases are deducted, up to a ceiling, from the rehabilitation benefit.

### ***The law on social services deals with social rehabilitation***

#### Flexible jobs

The provisions on flexible jobs are contained in the same law on an active social policy.

People who cannot obtain or stay in a job under normal labour market conditions are entitled to a flexible job. The employer pays the normal wage to these people, and the local authority pays the employer a subsidy covering half or two thirds of the wage. Employers may be public or private enterprises.

### ***The law on social services***

As a corollary to the early pension under the new law, the supplementary costs allowance, which came into force on 1 January 2003, compensates the additional costs and expenses resulting from a disability. People suffering from a severe and permanent physical or mental impairment are entitled to this allowance. Entitlement to this allowance is not therefore determined by a medical diagnosis drawn up by a doctor or by capacity for work, but by the overall situation of the disabled person and his or her family and the possibilities and obstacles that the disabled person may encounter in their daily life.

The allowance may be awarded to all inhabitants aged less than 65 if they satisfy the above-mentioned conditions, irrespective of their income and financial means and irrespective of their pensioner status. The law sets a minimum limit, i.e. only supplementary costs of more than DKK 6000 are compensated, and a standard monthly amount of DKK 2000 is discounted, although the benefit is calculated according to individual needs.

The wide range of provisions compensating the repercussions of a disability set out in the law on social services apply to all inhabitants.

The benefits set out in the law for persons in need of temporary or permanent assistance include:

- personal care and/or home care services for the severely disabled (temporary or permanent);
- respite and relief for persons caring for spouses or close relations at home;
- motor rehabilitation;
- care and support for people unable to travel alone;
- support and contact persons (deaf-mutes and the mentally disabled);
- offers of activation and employment to prevent disabled people from becoming isolated;
- consumer goods and apparatus;
- vehicles;
- adaptation of housing and help with moving home;
- transport assistance using personal vehicles;
- specially adapted housing for disabled or elderly people.

And, for young people:

- assistance with stays in post-school centres or residential homes;
- contact persons;
- work experience with public or private employers.

***In some circumstances, the law on social services also covers loss of earnings:***

People (mothers and fathers) who are caring at home for children aged under 18 suffering from a severe and permanent physical or mental impairment, or a chronic or long-term illness, are eligible for compensation calculated on the basis of the gross income received up to that time.

People caring at home for a close relation who is terminally ill are eligible for an allowance corresponding to 1.5 times the daily sickness benefits to which the carer would have been entitled. This amount may be increased in special cases.

The local authority may also hire persons for six months to provide care for a close relation who is disabled or severely ill. These employees are paid a flat-rate wage.

***The law on insurance against accidents at work and occupational diseases***

Under this law, the loss of earnings from work is compensated by a pension which is pro rata to the degree of incapacity for work. Permanent injuries result-

ing from the accident or occupational disease and affecting the daily life of the injured person are also compensated.

#### **D. Participation in social life**

Danish legislation contains no general law prohibiting discrimination against disabled people.

An article of the Constitution recommends that citizens should have the opportunity to work if they are fit for work.

The law on social services mentioned above covers the participation of disabled people in daily life.

## **GERMANY**

#### **A. Definition**

Section 2(1), first sentence, of the Ninth Book of the Social Security Code (SGB IX) and Section 3 of the Equal Opportunities for People with Disabilities Act define disability as follows:

"People are disabled if their physical or mental capacity or psychological health very probably differs from the condition typical of their age for a period exceeding six months and if their participation in social life is therefore impaired."

The definition of disability is based on the WHO International Classification of Functioning, Disability and Health (ICF), which has moved away from real or supposed deficits to focus on the aim of participation in the various areas of life.

A difference from the "typical condition" is understood to be the loss or impairment of physical, mental or psychological structures normally present at a particular age. If this impairment results in restricted participation in one or more areas of life, a disability is deemed to exist. The requirement for the impairment to very probably last for six months rules out temporary deficiencies but does not rule out interventions as early as required in the individual case.

When the agency administering the benefits in a particular case considers whether there is a disability, it does so on an individual basis and in the same way as with other conditions of entitlement. The formal identification of a disability and the degree of disability is important only in the context of the special assistance given to severely disabled people to enable them to participate in working life and for particular ways of compensating for disadvantages; and that only applies if the severe disability is not obvious. In some benefits laws, the definition of disability



given in SGB IX is specified as a condition of entitlement to the benefit (e.g. in SGB III and the Federal Supplementary Welfare Act).

## **B. Organisation of the legislation for disabled persons**

Disabled people and people who may become disabled in the future are naturally entitled in the first instance to the same rights, social security benefits and other assistance as other citizens; the relevant regulations apply to this group of people in the same way. This principle is reaffirmed by Article 3(3), second sentence, of the Basic Law, according to which no one may be discriminated against on account of their disability. This provision is an individual basic right that is directly binding on the legislature, executive and judiciary not only at federal level but also in *Länder* and local government units, as well as in other "public authority" institutions and organisations. The ban on discrimination indirectly affects legal relations between individuals, since it has to be taken into account when interpreting and applying civil law.

In addition, separate social legislation arrangements in favour of disabled people and people who may become disabled in the future are specifically geared to their self-determination and their equal right to participate in social life. There are also special rules, all more favourable, regarding the conditions of entitlement to benefits and, in many cases, also concerning the extent of the benefit. These special social legislation arrangements in favour of disabled people and people who may become disabled in the future were reformed with effect from 1 July 2001 through the Ninth Book of the Social Security Code (SGB IX), which is concerned with the rehabilitation and participation of disabled people. Under Section 1 of this Book, disabled people or people who may become disabled in the future receive benefits under this Book and under the benefit laws applicable to the rehabilitation agencies for the purpose of fostering their self-determination and equal right to participate in social life, as well as to avoid or counter discrimination. The special needs of women and children who are or may become disabled are taken into account here.

The *Leistungen zur Teilhabe* (participation benefits) or even some of their benefit groups are not assigned to an independent social security benefits category but are an integral part of the other functions of a number of benefits agencies. Where participation benefits are concerned, these agencies are covered by the umbrella term "rehabilitation agencies".

Under Section 5 SGB IX the participation benefits cover the following groups of benefit:

- medical rehabilitation benefits,
- employment participation benefits,
- maintenance and other supplementary benefits,

- community participation benefits.

Under Section 6 SGB IX, participation benefits are provided by seven groups of rehabilitation agencies altogether:

- medical rehabilitation benefits by the agencies responsible for health, pension and accident insurance and for social compensation where there is impairment of the health,
- employment participation benefits by the *Bundesanstalt für Arbeit* (Federal Institute for Employment), the agencies responsible for pension and accident insurance and for social compensation where there is impairment of the health,
- community participation benefits by the agencies responsible for accident insurance, social compensation where there is impairment of the health, and the public youth and supplementary welfare services.

Type of benefit	Accident insurance	Social compensation	Health insurance	Statutory pension insurance	Federal Institute for Employment	Youth services	Supplementary welfare
Medical rehabilitation	X	X	X	X		X	X
Employment participation	X	X		X	X	X	X
Social participation	X	X				X	X

The public youth and supplementary welfare services also provide medical rehabilitation and employment participation benefits as a consequence of their wide-ranging responsibilities if the benefits required cannot be claimed from the main agencies responsible because their conditions of entitlement are not met in the particular case.

Owing to the distinctive features of the sub-divided system, administrative responsibility for the benefits and their conditions of entitlement are governed by the particular rules for the individual rehabilitation agencies (Section 7, second sentence, SGB IX). By contrast, regulations on the actual participation benefits provided and their objective, which may be the same for several types of social security benefit, are to be found only in one place, and that is in SGB IX.

Where benefits in different benefit groups or from more than one rehabilitation agency are required, Section 10(1) SGB IX stipulates that the rehabilitation agencies concerned must, by mutual consultation and in agreement with the beneficiaries, group together by function the benefits expected to be required by the individual so that there is a perfectly smooth transition from one to the other. The benefits must be adjusted in line with the progress of the rehabilitation process. Their aim must be to enable the beneficiaries promptly, effectively, economically and permanently to achieve social participation as fully as possible

with due regard for the special nature of each individual case. The rehabilitation agencies have constantly to ensure that this procedure works as needed in each particular case.

Where necessary in an individual case, at the time a medical rehabilitation benefit is initiated and during and after its provision, the rehabilitation agency responsible examines whether the capacity for work of the disabled person or of the person who may become disabled in the future can be maintained, improved or restored by suitable employment participation benefits. If, while a medical rehabilitation benefit is being provided, it emerges that the job previously done is at risk, the need for employment participation benefits is clarified immediately with the parties concerned and with the rehabilitation agency responsible.

The rehabilitation agencies agree joint recommendations to maintain cooperation.

Coordination between different rehabilitation agencies and parties also takes place through the rehabilitation agencies' joint offices (Section 22 ff. SGB IX). They offer fast, unbureaucratic advice and support to disabled people or people who may become disabled in the future, their employee representatives and other trusted third parties, and their carers. This includes information on the rehabilitation agencies' conditions of entitlement and benefits, clarification of the need for rehabilitation and of which rehabilitation agency is responsible, help with clear and pertinent applications, and immediate referral to the appropriate rehabilitation agency.

For the Equal Opportunities for People with Disabilities Act, see under D.

## **C. Benefits in the various fields of social security**

Under Section 7 SGB IX, the regulations of SGB IX apply to participation benefits unless the benefit laws applicable to the respective rehabilitation agency state otherwise. Administrative responsibility for participation benefits and their conditions of entitlement are governed by the benefit laws applicable to the individual rehabilitation agencies. This takes account of the sub-divided system that has evolved over time. For example, only a member of the statutory pension scheme can generally expect to receive statutory pension benefits; similarly, only someone who meets the supplementary welfare benefit requirements can expect to receive those benefits. The relevant regulations can be found in the appropriate benefit laws.

### **1. Medical rehabilitation**

Medical rehabilitation benefits are provided by the agencies responsible for statutory health insurance, statutory accident and pension insurance, farmers' retirement pension insurance, the war victims' pension scheme and the care of war victims as part of the right to social compensation where there is impairment of the health, and by the public youth services and supplementary welfare services.

### a) benefits

Under Section 26 SGB IX, benefits are provided for the medical rehabilitation of disabled persons and persons who may become disabled in the future as required in order to

- avert, eliminate or reduce disabilities, including chronic illnesses, or prevent a deterioration thereof; or
- avoid, overcome or reduce a restricted capacity for work and the need for care, or prevent a deterioration thereof, and avoid the premature drawing of recurring social security benefits or reduce recurring social security benefits.

The medical rehabilitation benefits cover in particular:

- treatment by doctors, dentists and other healthcare professionals, provided that their services are carried out under medical supervision or on medical orders, including instruction to patients in how to develop their own powers of healing,
- early identification of disabled children and children who may become disabled in the future, and early improvement of their opportunities,
- medicines and dressings,
- treatment, including physiotherapy, speech therapy and occupational therapy,
- psychotherapy in the form of medical and psychotherapeutic treatment,
- aids and appliances,
- exercise testing and work therapy.

The medical rehabilitation benefits also include medical, psychological and teaching assistance where these benefits are necessary in a particular case to achieve or safeguard the legislator's aims and to avoid, overcome, reduce, or prevent a deterioration in consequences of disease. This assistance comprises the following in particular:

- assistance to enable people to cope better with illness and disability;
- activation of self-help potential;
- with the beneficiaries' consent, the provision of information and counselling to partners and family members, as well as to superiors and colleagues;
- putting people in touch with local self-help and counselling services;
- assistance with mental stabilisation and the development of social competence, including coaching in social and communicative skills and in handling crisis situations;
- coaching in life skills;
- instruction in how to claim medical rehabilitation benefits and motivating people to do so.

Supplementary and maintenance benefits are provided in connection with medical rehabilitation benefits as follows:

- *Krankengeld* (sickness benefit) is paid by the agencies responsible for statutory health insurance under Sections 44 and 46-51 of the Fifth Book of the Social Security Code (SGB V),
- *Verletztengeld* (industrial injury benefit) is paid by the agencies responsible for statutory accident insurance under Sections 45-48, 52 and 57 of the Seventh Book of the Social Security Code (SGB VII),
- *Übergangsgeld* (transitional allowance) is paid by the agencies responsible for statutory pension insurance under SGB IX and Sections 20 and 21 of the Sixth Book of the Social Security Code (SGB VI),
- *Versorgungskrankengeld* (disabled person's sick pay) is paid by the agencies responsible for the war victims' pension scheme within the scope of the right to social compensation under Sections 16 to 16h and 18a of the Federal War Victims Act.

#### b) potential beneficiaries

All disabled people and people who may become disabled in the future can claim in full the medical rehabilitation benefits required in a particular case, but the administrative responsibilities for the benefits and their conditions of entitlement differ.

#### c) conditions of entitlement

Disabled people and people who may become disabled in the future have access to these benefits according to the regulations governing the respective rehabilitation agency. For example, the agencies responsible for statutory pension insurance provide medical rehabilitation benefits as long as the personal requirements and requirements of insurance law are met. The provision of participation benefits by the statutory accident insurance scheme is conditional upon the industrial accident or occupational disease being recognised by that scheme.

### **2. Participation in working life**

Employment participation benefits are paid as needed to maintain, improve, establish or restore the capacity for work of disabled people, or of people who may become disabled in the future, according to their achievement potential and to secure their permanent participation in working life as far as possible. In principle all the career paths and vocational opportunities open to non-disabled people are also available to disabled people. Disabled women are assured equal opportunities in employment, especially through job opportunities that have a suitable vocational objective, are local and can be taken up on a part-time basis.

### a) benefits

Employment participation benefits are provided by the Federal Institute for Employment, the agencies responsible for statutory pension and accident insurance, for farmers' retirement pension insurance, for social compensation where there is impairment of the health, for public youth services and for supplementary welfare services. Under Section 33ff. SGB IX, they comprise the following:

- help with keeping or finding a job, including counselling and placement benefits, coaching and aids to mobility, as well as the cost of any support to severely disabled people in their work duties (*Arbeitsassistenz*),
- vocational preparation, including any basic training needed because of the disability,
- vocational adjustment and in-service training, also where the benefits include a school-leaving qualification required for participation,
- vocational training, also where the benefits are provided at school for the lesser proportion of the time,
- interim allowance to facilitate self-employment,
- other assistance to encourage participation in working life, to enable disabled people to take up and maintain appropriate, suitable employment or self-employment.

The benefits are also provided for the periods of work experience that may be required.

The benefits also include medical, psychological and teaching assistance, where these benefits are required in a particular case to achieve or safeguard the above-mentioned aims and to avoid, overcome or reduce consequences of disease or to prevent a deterioration thereof. These include, for example, assistance to enable people to cope better with illness and disability, the activation of self-help potential, and coaching in life skills. The cost of determining vocational aptitude and of a trial period of work is also borne in full.

Further assistance includes the following:

- motor vehicle assistance under the Motor Vehicle Assistance Order,
- the cost of aids required for occupational practice and participation in working life owing to the nature or severity of the disability,
- the reasonable cost of acquiring, equipping and maintaining accommodation that caters for the needs of a disabled person.

Also covered are benefits in special vocational rehabilitation institutions (vocational training/vocational assistance units and similar institutions) if this is necessary

because of the nature and severity of the disability or to ensure success; and in recognised workshops for disabled people under the job introduction scheme (*Eingangsverfahren*) and in the area of vocational training; but also at work, if employment on the general labour market or vocational preparation, vocational adjustment and in-service training or vocational training cannot be considered or cannot yet be (re)considered because of the nature or severity of the disability. Vocational assistance can also be provided by specific bodies - the *Integrationsämter* (Central Agencies for the Disabled) - to enable severely disabled people to participate in working life.

Supplementary and maintenance benefits are paid in connection with vocational rehabilitation benefits in the form of a transitional allowance as follows:

- the agencies responsible for statutory accident insurance under SGB IX and Sections 49-52 of the Seventh Book of the Social Security Code (SGB VII),
- the agencies responsible for statutory pension insurance under SGB IX and Sections 20 and 21 of the Sixth Book of the Social Security Code (SGB VI),
- the Federal Institute for Employment under SGB IX and Sections 160 to 162 of the Third Book of the Social Security Code (SGB III),
- the agencies responsible for the care of war victims within the scope of the right to social compensation under SGB IX and Section 26a of the Federal War Victims Act.

The range of benefits provided also includes employer grants, in particular:

- training grants for company training provision,
- affirmative action grants,
- grants for workplace aids or equipment,
- reimbursement of the cost of fixed-term probationary employment.

Assistance in addition to the medical and vocational rehabilitation benefits provided in lieu of income is available for these benefit groups as follows:

- payment of fares,
- home help and workplace support workers,
- childcare costs.

#### b) potential beneficiaries

All disabled people and people who may become disabled in the future can generally claim in full the vocational rehabilitation benefits required in a particular case if they are of employable age. However, these benefits are obtainable from the various rehabilitation agencies within the limits of their respective administrative responsibility and the regulations on conditions of entitlement applicable to the respective agency.

### c) conditions of entitlement

Disabled people and people who may become disabled in the future have access to these benefits according to the regulations governing the respective rehabilitation agency. See 1c). Before employment participation assistance can be given, an existing or impending disability must be identified in each individual case, along with that person's specific vocational aptitude. This is where the Employment Service officers offering vocational guidance to disabled people generally call upon the specialised help of the Employment Service medical or psychological services, for example. Comments from the schools are taken into account, along with medical and psychological reports that are already available. If necessary, team meetings can be held, possibly with education professionals, doctors or psychologists. A trial period of work can be arranged, or vocational aptitude determined, if aptitude can be determined only by an additional period of work experience.

### **3. Social rehabilitation**

Community participation benefits are provided by the agencies responsible for statutory accident insurance, the war victims' pension scheme and the care of war victims as part of the right to social compensation where there is impairment of the health, and by the public youth services and supplementary welfare services.

#### a) benefits

Community participation benefits are provided to enable disabled people to participate or maintain their participation in social life or to make them as independent as possible without the need for care. They are benefits provided neither as medical rehabilitation benefits nor as employment participation benefits, and they cover in particular:

- provision of aids or resources that cannot be counted as medical or vocational rehabilitation,
- special education provision for children who have not yet started school,
- help with the acquisition of practical knowledge and skills that disabled people need to enable them to participate in community life to the extent achievable by them,
- help to encourage disabled people to communicate with the world around them,
- assistance with the acquisition, equipment and maintenance of accommodation meeting the particular needs of disabled people,
- assistance with independent living in sheltered accommodation,
- assistance with participation in community and cultural life.



### b) potential beneficiaries

Benefits are provided for disabled people.

### c) conditions of entitlement

The provision of these benefits is governed by the regulations for the relevant rehabilitation agency. See 1c).

## **D. Participation in social life**

The Basic Law of the Federal Republic of Germany contains the following ban on discrimination in Article 3(3), second sentence: "No-one may be discriminated against on account of their disability." The Ninth Book of the Social Security Code (SGB IX) implements this discrimination ban in the area of social policy, and the Equal Opportunities for People with Disabilities Act, which came into force on 1 May 2002, implements the Basic Law discrimination ban in the area of public law. The main task for the next few years will be to put the laws already in force into practice. This is also one of the reasons behind the events being held in Germany to mark the European Year of People with Disabilities.

## **GREECE**

### **A. Definition**

It is difficult to provide a definition of disabled people in Greece: partly because the people to be included in this particular category are not a comparable group and partly because a whole range of criteria cover different situations and problems. The current approach, however, no longer places the emphasis on the medical dimension of the person being assessed.

In the definition of the EU Council of Ministers, disabled people are seen as individuals with severe disadvantages or impairments due in particular to physical, mental and psychological injuries which restrict their potential or exclude them completely from the activities and functions that non-disabled people are able to perform, and in the WHO definition disabled people are seen as individuals presenting severe disadvantages resulting from physical or mental injuries; in both cases, however, there is no precise and widely accepted definition.

Any injury undoubtedly always gives a person a degree of incapacity from a functional point of view, but it is their social environment which makes them disabled. In other words, the inability of such people to participate in the social pro-

cess is due to social causes and not to their biological condition which brings about a specific situation of invalidity.

The current approach is to stress the social aspects of disability. A person may be temporarily considered to be a disabled person following a disease or accident or because of their age or because of any other cause which restricts the way in which are able to function in their social environment for a period of their life. In this conception, any individual from a given society could potentially be considered disabled for a part of their life, thereby imposing a need for care and prevention for all human beings and not just for disabled people.

## **B. Organisation and C. Benefits**

In recent years there have been major attempts to consolidate the regulatory framework surrounding disabled people; this can be seen from the enactment of Law 2430/96 which led, on the one hand, to the adoption of the programme of action and the standard rules on equal opportunities for persons with disabilities, already approved in 1993 by the United Nations General Assembly at its 47th Plenary Session, and, on the other hand, to the compulsory issue of an invalidity card for any disabled person, based on identical criteria for everyone enabling specialist committees to assess invalidity.

Similar initiatives are set out in Law 2646/98 which creates a national system of social care.

There is no one law on disabled people: each area of social protection is governed by its own regulations, especially as regards the benefits available.

### ***Benefits and preferential treatment in the various fields of social protection and in other fields of social life***

#### ***1. Social Security***

- Award of invalidity pensions to those insured by IKA (Social Insurance Institute, which covers employees) under certain conditions (see MISSOC Tables). Law 1902/90.
- Persons insured by IKA suffering from paraplegia and tetraplegia are entitled to a full old-age pension irrespective of their age if they have completed at least 4050 days of insurance. Law 1902/90.
- Persons insured by IKA suffering from congenital haemolytic anaemia with an invalidity level of at least 67% who have had a transfusion are also entitled to a full old-age pension under the same conditions as above. Law 2227/97.
- Similar preferential treatment for non-sighted insured persons. Law 612/77.

- The base amount of the invalidity pension is increased by 50% if the disabled beneficiary requires permanent third-party supervision, care and attendance (total invalidity). Law 1140/81.
- Law 1140/81 also makes provision for the payment of a special benefit to insured persons and pensioners suffering from paraplegia and tetraplegia with a minimum invalidity level of 67%. The monthly amount of the benefit is twenty times the statutory wage of an unskilled worker ( $€20 \times 22 = €440$ ).

## 2. Social Aid (Welfare)

(Benefits awarded by the Ministry of Health and Social Welfare)

- Benefits for people suffering from a severe disability with an invalidity level of at least 67%
- Benefits for the non-sighted (several categories)
- Benefits for children (up to the age of 18) suffering from cerebral motor disorders.
- Benefits for people suffering from congenital haemolytic anaemia, haemophilia or AIDS.
- Benefits for lepers.
- Benefits for non-hearing/non-speaking people aged under 18 or over 65.
- Benefits for non-insured people suffering from paraplegia/tetraplegia and for disabled people (monthly amount: twenty times the statutory wage of an unskilled worker,  $€22.35 \times 20 = €447$ ).
- Benefits for people with severe mental retardation (intelligence quotient below 30).
- Food benefits for people suffering from nephropathy (final stage of kidney impairment).
- Liquid fuel allowance for disabled people with an infirmity of the legs of over 80%.

From the point of view of benefit policy, the benefits paid are gradually being increased. At present, the minimum amount of the benefits paid by the Ministry of Health is set at €150 per month.

### 3. Employment

- Recruitment of protected persons into the public sector, legal persons under public law and local authorities, without competition or selection, at a quota of 5% of the posts to be filled (Law 2643/98).
- Recruitment of disabled people into the public sector, legal persons under public law and local authorities for posts of ushers, night watchpersons, cleaning men and women, porters, gardeners and waiters at a quota of 20% of vacant posts (Law 2643/98).
- Recruitment of non-sighted people into the public sector, legal persons under public law and local authorities to cover 80% of vacant posts in telephone switchboards (Law 2643/98).
- Recruitment of disabled people into public sector institutions:
  - public enterprises and bodies
  - state-subsidised legal persons under public law
  - legal persons belonging either to the above institutions or to legal persons under public law or to local authorities.

It is compulsory for these institutions, if they employ over 50 people, to recruit protected persons to cover 8% of their total staffing needs (3% of disabled people).

- The Labour Force Employment Agency (OAED) has launched a programme to subsidise employers who hire disabled people.
- Another OAED programme subsidises young professionals who are disabled.

### 4. Education

- Education for disabled people, i.e. people who have educational and adaptation problems as a result of physical, mental, psychological and emotional problems. Special education (primary, secondary and technical) is available for people requiring special instruction (Law 2817/2000)
- Special competitions for disabled people applying for entry into higher education (Law 2527/97)
- Entry, without competition, into higher education for those possessing a baccalaureate and suffering from serious diseases, at a rate of 3% over and above the total number of students admitted to each faculty.

## 5. Sport

In order to develop sport for disabled people, Law 2725/99 makes provision for the creation of sports associations and federations.

The confederation of the "National Paralympic Committee", which represents Greece on the "International Paralympic Committee" (IPC), is the umbrella organisation for these federations.

Athletes successful at national, international or Olympic level may be recruited into vacant posts in the public sector, receive bonuses and obtain permits to open national lottery kiosks.

## 6. Transport - Travel

- The highway code regulates drivers' behaviour in respect of disabled pedestrians, the conditions under which disabled people's wheelchairs and invalid carriages may be used on roads and other aspects connected with their parking.
- Special regulations allowing disabled people to gain driving licences have been enacted.
- Disabled people with an invalidity level of at least 67% may use public transport free of charge (buses, underground) in cities: half-price tickets are available for railways and coaches.

## 7. Social Tourism

Disabled people may take part in the social tourism programmes organised every year by the National Tourism Office.

## 8. Other Benefits, Tax exemption, Loans

Disabled people are entitled (under certain conditions) to a range of preferential benefits, such as exemption from taxation when purchasing a vehicle, a reduction of or full exemption from income tax payment obligations, the acquisition of workers' housing via the relevant body (OEK) without taking part in the lottery, housing benefit and lastly an assisted loan (very favourable clauses) for the purchase or construction of a house.

### **d) Participation in social life**

The approval of the new Constitution (2001) which supports the introduction of greater social justice and presupposes a system of collective and individual responsibility, reflects the Greek state's decision to take responsibility for disabled

people (Article 21), and sets out the main lines of the policy to be followed as regards the equal opportunities and independence of disabled citizens.

The current framework in which these policies are organised is being supported by the development of a network of efficient and accessible welfare care services available for all citizens based on cooperation at all levels of social organisation (local, regional and central) and all levels of welfare care (primary, secondary and tertiary).

There is little doubt that disabled people have long been a marginal social group, experiencing a lack of social protection without being able to defend their rights. Within Greek society, a million or so people are registered as disabled, and over 500 000 receive state benefits through welfare, health, social security and industrial relations networks. It is nevertheless very difficult to give precise figures for disabled people. The number of people in receipt of invalidity pensions from the basic insurance funds is estimated at 330 358 from state budget data for 2001.

It should also be stressed that over the last twenty years there has been considerable progress as regards the protection of disabled people and the fight against discrimination and social exclusion as a result of the development of an effective and egalitarian process of social and economic integration.

There are four main strands to this change:

- Modernisation of the institutional framework.
- Improvement of the organisation and quality of the services offered in both closed environments (asylums or care homes) and open environments (outside institutional care).
- The development of a disabled persons' movement: disabled people are claiming their rights through associations and working with state institutions to secure a fairer social policy.
- Greater awareness in public opinion.

Action by state institutions includes high-level activities in the areas of information on and awareness of the various measures to improve pharmaceutical and medical conditions, the organisation of support services and the accessibility of a structured and free environment.

The state also helps to consolidate networks of information, appropriate education, rehabilitation and occupational integration. It also protects the income of disabled people through its benefit and social security policy. The prime mover of this success lies both in the close links between the state institutions launching and implementing social policies and in the cooperation between these institutions and disabled people's organisations.

The Ministry of Health and Social Welfare is the main institution with responsibility for policy for disabled people, although other Ministries (Interior, Social Security and Labour, Finance. Public Works) also play a part.

The Ministry of Health and Social Welfare has, under Law 2646/98 which sets up a single framework for social care, recently inaugurated a network of new institutions including the centres for education, social support and training for disabled persons (KEKYKAMEA). These centres, located throughout the country, have specialist staff: psychologists, child psychologists, physiotherapists and social workers specialising in vocational guidance. They have tasks of prevention, counselling support and information. They can refer disabled people to specialist services and undertake their occupational rehabilitation and integration into the social fabric. The same law also advocates the creation of new institutions such as the National Social Welfare Centre (EKAKB), the Full Recovery and Rehabilitation Centres (KAA) and the Physical and Social Rehabilitation Centres (KAFKA).

With a view to improving the quality of service provision, the Ministry of the Interior, the Public Service and Decentralisation has taken the initiative to set up a Joint Ministerial Committee in order to draw up and implement a programme of action to facilitate disabled people's access to public services. Its aim is to introduce an egalitarian system that is socially just for all citizens. The main lines of this programme include:

- ensuring that disabled people can gain access to public buildings;
- giving priority to disabled people in their dealings with the public institutions;
- focusing on questions concerning disabled people which require special regulation, such as the safeguarding of the legal capacity of non-sighted and non-sighted and non-speaking people;
- providing training for civil servants responsible for matters connected with disabled people;
- providing disabled people with full information on issues affecting them;
- informing and raising the awareness of public opinion.

The findings of the Joint Ministerial Committee will undoubtedly lead to a range of policy measures in the form of circulars.

For instance, the YPEXODE which states that the new General Construction Code (Law 2831/June 2000) should contain regulations to improve the services offered to disabled people, whether in public places or private dwellings.

The Ministry of Public Transport considers that it is solving the transport problems of disadvantaged people by providing specially adapted buses and trams and renovating metro stations, airports and ports.

### ***Measures and reforms to be implemented in the near future***

Following Law 2646/98, a draft law reorganising the national social care system, which sets out the decentralisation of the current system, has now been drawn up.

This draft, which will probably be approved by Parliament by the end of 2003, makes provision for the creation of a National Observatory for Disabled People (legal person under private law) which will monitor developments and trends and the rights of disabled people and maintain contacts with the EU authorities and those of other Member States on legislative matters and technological expertise in relation to disabled people.

Other provisions are being introduced to govern the independent or semi-independent life of disabled people in specialist centres.

In parallel with this draft, progress is also being made, in conjunction with local authorities, with the extension of the "home care" system for disabled people, up to now available only for the elderly. By the end of 2003, it is hoped that 1000 such programmes will have been implemented throughout the country.

An accreditation procedure for organisations (especially in the private sector) undertaking social work is also to be implemented.

Improvements to the condition of care institutions for disabled people have already started with the conversion of asylums into modern rehabilitation units; people living in asylums are also being integrated into the family and the community.

Alternative forms of employment are also being stepped up through the creation of sheltered workshops for disabled people.

There are plans to set up creative activity centres for children and adolescents at certain times of day, in regions in which there are no KEKAKYMEA (centres for education, social support and training for disabled persons). There are also plans progressively to integrate disabled children into crèches.

A body of health and social welfare inspectors, as set out in Law 2920/01, is to be set up by the end of 2003. Its tasks will include monitoring social welfare institutions in both the public and private sectors in order to assess the quality and appropriateness of the services supplied.

The Greek Presidency in 2003 coincides with the Year of People with Disabilities. A national committee for the disabled is therefore to be set up. The inaugural event will take place in Athens and will look at the issue of "assistive technology" with the agreement of the European Commission.



## SPAIN

### A. Definition

The Spanish Constitution of 1978, in its Article 49, establishes that: "Public powers will implement a policy with a view to the estimation, treatment, rehabilitation and integration of persons with physical, sensorial and psychical impairments, to whom the State will provide the specialized care they need, protecting them specially so that they can make use of the rights which this article grants to every citizen". This article of the Spanish Constitution was developed in the Act on Social Integration of the Disabled (LISMI), where the term DISABILITY is defined.

In our country, thus, from a legal point of view there is not a notion of IMPAIRMENT. The term used when a person obtains certain benefits derived from his/her impairment is DISABILITY. Therefore, a person is considered disabled only when he/she is classified as such on an administrative basis. The legal instrument regulating this condition is Act 13/1982 on Social Integration of the Disabled and its subsequent development in Royal Decree 197/1999, 23 of December, about the procedure for the acknowledgment, declaration and qualification of the disability degree.

According to Art. 7 of that Act: "...a disabled person is that whose opportunities of educational, labour or social integration are diminished as a consequence of a foreseeable permanent deficiency, congenital or not, in his/her physical, psychical or sensorial capacities".

Royal Decree 197/1999 upholds the contents of LISMI Act stating that "the determination of the disability degree is a unique and facultative action inasmuch as it relates to the teams competent to perform it and to the scale used for the evaluation".

The disablement qualification is done in terms of degrees, and this degree is expressed as a percentage.

This norm, similarly to LISMI, breaks the principle of territoriality when in its article 7 establishes that "if the person resides abroad, the competence for the exercise of such functions will concern to the organ.

The Act distinguishes between physical and sensorial disability and psychical disability. This one is ruled by different patterns.

As refers to physical deficiencies, it evaluates those permanent deficiencies that can be originated in the muscles and skeleton (Chapter 2); nervous system (Chapter 3); respiratory apparatus (Chapter 4); cardiovascular system (Chapter 5); haematopoietic system (Chapter 6); digestive apparatus (Chapter 7); genito-

urinary apparatus (Chapter 8); endocrine system (Chapter 9); skin related deficiencies (Chapter 10); and neoplasias (Chapter 11).

Chapters 12 and 13 of Annex 1.A are dedicated to sensorial disabilities; language dysfunctions are treated here as well (Chapter 14).

Mental underdevelopment (Chapter 15) and Mental Illness (Chapter 16) are considered as psychical deficiencies. The expression Mental Illness refers to: organic mental disorders, schizophrenia and psychotic disorders, as well as anxiety, somatomorphous and adaptive disorders, and dissociative and personality troubles.

Annex 1.B deals with certain Social Factors that are qualified as supplementary.

Recently, the concept of disabled person has come into use in our country. And from the publication in May 2001 of the new HWS (Health World Organization) International Classification of Functioning, Disability and Health, progress has been made in the utilization of a unified language in the sense proposed by this.

- The CIF establishes the following classification:
- Functions and Corporal Structures (previously Deficiencies)
- Activities (previously Impairment)
- Participation (previously Disability)

## **B. Organisation of the legislation for disabled persons**

Throughout the last two years the application of the principle of normalization of policies aimed to disabled persons has been gradually consolidated in Spain, being integrated within general policies.

General policies on disabled persons have their grounds in the Spanish Constitution, in Health General Act 14/1986 of 25 April, in the Organic Act of General Order of the Educational System and in Royal Decree 1/1994 of 20<sup>th</sup> June, which approves the Consolidated Text of the General Social Security Act.

The specific frame as relates to disabled persons care has its legal development in Act 13/1982 of 7 April, on the Social Integration of Disabled Persons (LISMI). Later on, each Autonomous Community has included in their respective Acts on Social Services those themes related with incapacity, but in perfect accordance with those precepts resulting from the LISMI and from the Constitution. The evaluation for the legal declaration of disability is regulated by Royal Decree 1971/1999, of 23 December of the procedure for the recognizing, declaration and qualification of the disability degree. This regulates the acknowledgement of the entitlement to the application of the benefits that can be granted according to this Act or to any other.

In respect of health, Health General Act 14 /1986 of 25 April, among other aspects, reorganizes health administration in our country in a National Health Sys-

tem, where Health Services of the State Administration as well as Health Services of Autonomous Communities are articulated. These last are now competent for health aspects after the conclusion of the processes of competences transfer.

The National Health System grants every citizen not only free universal care, but also prevention against illnesses, health education and promotion as well as rehabilitation. Preventive and promotion programmes are developed fundamentally through primary care, but also by means of specific programmes for the protection of and attention to high-risk groups. Health General Act establishes in its art.18 care programmes for those groups with a high-risk profile and in its art. 20 activities in the field of mental health.

The development of preventive strategies concerns, apart from the Minister of Health and Consumption, to other Ministers, as the Domestic Affairs Minister (traffic accidents prevention) and Minister of Labour and Social Affairs (labour accidents and professional illnesses prevention). As relates to labour risks, the basic law of the Minister of Labour and Social Affairs is Act 31/1995, of 8 November, on Labour Risks Prevention, which establishes the creation of prevention services in the companies. This Act also endorses the permanence and competencies of the National Institute for Hygiene and Labour Safety whose main objective is the prevention and promotion of health in labour environment. After the assumption of competencies in this matter by the Autonomous Communities, these are creating several entities and commissions whose aim is to widely develop activities in the autonomic domain.

In Spain, traditional processes of medico-functional rehabilitation in the ordinance of the contributory Social Security are materialized in the Individual Recuperation Programme, in which elements as the aptitudes and residual faculties of each beneficiary, age, sex and family residence, as well as, in the event of reversible permanent incapacities, the characteristics of the last occupation and reasonable desires of social promotion will be taken into account. (art. 155 of Health General Act).

As relates to the educational domain, art. 27 of the Constitution establishes the right of every person to education. The application of the Organic Act of General Order of the Educational System of 1990 has implied an important transformation in respect of the attention to those children with special educational needs (SEN) as relates to School Integration and Special Education (arts. 36 and 37), giving priority to the integration of these in the ordinary system. The model valid in Spain is established in the LOGSE (arts. 36-37), which guarantees the schooling of students with special educational needs in Ordinary Centres and only when the students' needs can not be duly attended in these Centres will they be schooled in Centres or Units of Specialized Education (art.37.3).

Royal Decree 696/1995 of 28 April on Regulation of the Education for Students with Special Educational Needs regulates normative aspects, resources planning and the organization of the attention for these students.

As refers to vocational training, the educational system reviews the formative contents so as to adapt them to the professional qualifications demanded by the labour market. Those students with special educational needs will have access to any formation cycle of vocational training in accordance with their capacities and qualifications. Royal Decree 696/1995, establishes in art. 22 Formative programmes for the transition to adult life which can also contain an element of specific vocational training.

The aim of the Special Vocational Training included in art. 4 of Royal Decree of 28 April 1995 regulating the education of students with special educational needs is a qualification which enables the person the integration in the labour market, whenever it is possible.

The eventual access to University, regulated by the same Royal Decree 696/1995 is established after the orientation by psycho-pedagogical teams or by the Orientation Department of the centre to which the student belongs, but always being necessary to pass the University entrance examinations. The admission of students with special educational needs in University is regulated in Royal Decree 1005/1991, as amended in 1992.

The so-called "Programmes of Social Guarantee" are available for students between 16 and 21 years of age which have not reached the objectives of the Compulsory Secondary Education. Students with special educational needs can accede to these programmes under the integration scheme or under a modality of these programmes specifically aimed to students with special educational needs.

As refers to vocational orientation and labour intermediation, the Act for Social Integration of Disabled Persons establishes three basic elements: vocational orientation, vocational training and medical-functional rehabilitation treatments.

On the other hand, Royal Decree 735/1995, regulates non-profit oriented employment agencies, breaking the monopoly of the State in respect of the provision of these services. Employment agencies are entities which cooperate with the Employment National Institute in the intermediation with the labour market.

The National Plan on Vocational Training and Insertion comprises a set of actions aimed to unemployed workers, mainly disadvantaged groups, as is the case of disabled persons, so as to provide them with the qualifications needed for labour market integration (Royal Decree, 631/1993). The management of this Plan is nowadays a competency of the Autonomous Communities.

This type of training is free of charge for the students, which are covered against the risk of accident and receive allowances for transportation, food and accom-

modation. Scholarships amounting to the 75% of the prevailing inter-occupational minimum wage are available to disabled persons.

The labour insertion of disabled persons is included within the general frame of the State social policy and specifically in the WORKERS' STATUTE (Royal Decree Law 1/1995 of 24 March, which approves the consolidated text of the Workers' Statute Act). This basic norm forms the general frame of all labour relations and is equally binding for all workers, be they disabled or not.

#### Act 13/1982 on Social Integration of Disabled Persons (LISMI)

Title VII of the LISMI, when tackling labour integration of disabled persons, founds its strategy on the principles of normalization and integration, non-discrimination and equal opportunities (arts. 37 and 38).

This Act, so as to guarantee as much as possible the constitutional right to work, contains a set of resources (measures, cash benefits and services) which, as a whole, aim to balance the difficulties encountered by disabled persons to obtain a job, maintain it or progress in it.

So as to properly develop the objectives and strategies described above, on date 15 October 1997 the Agreement between the Minister of Labour and Social Affairs and the Spanish Board of Disabled Persons' Representatives is signed, establishing a Plan of Urgent Measures for the Promotion of Employment between Disabled Persons.

Since the LISMI was passed in 1982 several measures facilitating the employment of disabled persons have been established. They are basically the following:

Employment in the ordinary labour environment; these measures aim to facilitate the hiring of disabled persons in an ordinary company. The beneficiaries of these measures are workers with a minimum incapacity degree of 33%.

In the entrepreneurial sector: Jobs reservation (Act 143/1982 – R.D. 27/2000) According to art. 38.1 of Act 13/1982, of April 7<sup>th</sup>, public and private enterprises with more than 50 permanent workers are bound to hire a number of disabled workers amounting to a percentage not under the 2% of the staff, chosen among those persons registered as disabled workers in the relevant disabled workers register of the Employment Agency.

R.D. 27/2000 establishes exceptional measures alternative to the compliance with the 2% share reserved to disabled workers in companies of 50 workers or more.

Furthermore, there are certain specialities in the field of disabled persons hiring affecting:

- indefinite time contracts
- temporary contracts

- training contracts for disabled workers
- selective employment
- protected employment

With relation to Rehabilitation, Act 13/82 on Social Integration establishes social benefits as a right for all disabled persons.

Throughout the eighties, in the different Autonomous Communities several acts regulating social services including care for the disabled were developed.

Act 7/85 of 2 April, regulating the basis of the Local Scheme, attributed competencies on social service provision to the councils.

In Spain social and economic benefits for disabled persons are derived from the content of Title V of Act 13/1982, of 7 April, on the Social Integration of Disabled Persons. Later on they were substituted by those included under Act 26/1990 of 20 December, on non contributory benefits and then included under Social Security General Act with legislative Royal Decree 1/1994 of 20 June.

Contributory benefits for the different types of permanent incapacity have been regulated. Non-contributory benefits are subject to the condition that the person is affected by an incapacity degree equal or over 65%, provided that he/she lacks in sufficient economic resources.

Royal Decree 1300/1995, of 21 July, develops fiscal, administrative and social measures as regards to incapacity.

### **C. Benefits in the various fields of social security**

Disabled persons have the same benefits, in both contributory and non-contributory levels, as those included under the scope of application of the System.

There are some specific benefits:

1. Social integration benefits for disabled persons under the LISMI.

1.1. Minimum Income Guarantee and Carer Allowance.

These allowances were discontinued in 1990 though their beneficiaries can continue receiving them except if they opt for a non-contributory pension.

1.2 Mobility allowance and compensation for transport expenses.

This allowance is aimed to those persons with an incapacity degree equal or over 33% who can not leave their usual dwelling and do not perform labour activity. This subsidy is subject to income ceiling.

### 1.3 Health and pharmaceutical care.

These benefits are provided to those persons who are not entitled to them as holders or beneficiaries.

Furthermore, there are certain programmes of Social Action Support aimed to complete those activities designed to attend social needs included in the programmes of the different Public Administrations. Between them we can note the following:

- Allowances of social character derived from the fiscal allocation of Income Tax.
- Programmes for disabled persons.
- Programmes to promote volunteer work.
- Programmes for persons affected by VIH.
- Programmes for social inclusion.
- Concerted Plan of Social Services Basic Benefits of Local Councils.

This programme is built on the cooperation and concentration of Public Administrations (State, Autonomous Communities and Local Corporations) following an initiative of the Minister of Labour and Social Affairs whose objective is to guarantee the rights that, in the field of Social Services, all Spanish citizens must have, notwithstanding their territorial location.

- Experimental programmes focused on training and employment, whose object is to explore new ways of labour integration as well as integral programmes for the formation and employment of unemployed persons.
- Promotion of autonomous employment, aimed to finance entrepreneurial projects of unemployed disabled workers who want to become self-employed workers.

## **D. Participation in social life**

The Spanish Constitution requires from the public powers the adoption of measures to promote those conditions which enable equality and a real and effective freedom for groups and individuals. Among the rights established in Chapter II we must mention the prohibition of discrimination of any kind (art.14). Nevertheless, in our country there is no specific act against discrimination though there are some initiatives in that sense: a Draft Bill Against Discrimination of disabled persons is being prepared. Similarly, work is being done to translate into the Spanish legal body the Council Directive 2000/78/CE of 27 November 2000, on the establishment of a general frame for equal treatment in employment and occupation.

The measures aimed to guarantee the total integration of disabled persons mentioned in detail in this report are the following:

- Social and economic benefits.
- Employment support.
- Measures to support school integration.
- Measures to eliminate architectonic, urban and communication barriers.
- State Board for Disabled Persons. Its basic aim is the institutional cooperation between the associative level and the State General Administration.

As it has been already mentioned, a Draft Bill Against Discrimination is being prepared, as well as the translation into the Spanish legislation of the European Regulations on this matter.

## FRANCE

### A. Definition

There is no legislative or regulatory definition of disability: although the laws of 30 June 1975 on disabled people recognise disability, they do not define it. France therefore relies on international definitions and the work being carried out to reform the International Classification of Disability (ICD) drawn up by the WHO and adopted in 1998 by France as a reference for statistical nomenclatures on disability.

The use in French policy of the concepts set out in this classification has enabled some progress towards a less medical approach to disability which focuses more on full social integration. It would nevertheless seem nowadays that a broader vision of the causes of disability, including its environmental components, should pave the way for more comprehensive work to pinpoint a range of methods of compensation, making it possible to curtail the exclusion from which disabled people are still suffering today.

In social protection legislation, in order to determine eligibility for benefits, reference is made to a notion of permanent incapacity measured, in the case of insurance against accidents at work and occupational diseases, by a level determined "*by the nature of the infirmity, the general condition, age and physical and mental faculties of sufferers and their occupational abilities and qualifications*", classed in categories "*taking account of the remaining capacity for work, general condition, age and physical and mental faculties of insured persons and their occupational abilities and qualifications*" in the case of sickness insurance, or assessed with respect to a minimum level, which is not defined, for the award of



the various benefits for which disabled people are eligible. In the case of the elderly, reference is also made to a notion of loss or reduction of independence as a result of a person's physical or mental condition.

## **B. Organisation of the legislation for disabled persons**

In France, the regulations on disabled people are complex and fragmented among a whole range of laws depending, in particular, on the cause and extent of the disability, the age of the person and the field in question (work, taxation, housing, transport, etc.). Provisions in the social sphere are outlined below.

a) Policy for disabled people has been shaped largely by two founding laws of 30 June 1975 whose purpose was to affirm the fundamental rights of disabled people and to specify how they were to be implemented, thereby simplifying complex legislation that was difficult to apply: *Law 75-534 setting out guidelines for disabled people* and *Law 75-535 on social and medico-social institutions* which has recently been revised by the *Law of 2 January 2002*.

This policy has four main components:

- care in medical and medico-social institutions specialising in care for disabled people (which is not examined here);
- adaptation of common-law systems to make it easier for disabled people to live a normal social and occupational life (see point D for some details);
- financial resources (see below and point C);
- information, counselling, assessment and guidance. This fourth component, which brings the various fields together, covers all measures by bodies whose purpose is to help disabled people to gain access to existing systems and find solutions best in keeping with their needs. These include, in particular, the *Commissions départementales d'éducation spéciale (CDES - Departmental Special Education Commissions)* and the *Commissions techniques d'orientation et de reclassement professionnel (COTOREP - Technical Guidance and Vocational Redeployment Commissions)* whose tasks include assessing the permanent incapacity level of disabled people and, where necessary, deciding on the award of corresponding benefits. The COTOREP is also responsible for recognising the status of "disabled worker".

b) As regards benefits, the main French laws that have historically covered disabled people include: in addition to the general principles on civil liability set out in the Civil Code, the 1898 law protecting victims of accidents at work and occupational diseases, the provisions adopted in 1919 for military and civilian victims of war (military and war victims' invalidity pensions code) and, in 1930, the protection of employees suffering common-law accidents and invalidity. Provisions have also been enacted for other groups of workers (public servants and the self-employed). Since the 1975 laws, disabled people not or insufficiently covered by

one of the above types of social security legislation, have been eligible for special benefits. Lastly, a 1997 law, which was substantially amended in 2001, sets out responsibility for the loss of independence of the elderly.

Compensation is also available under other social laws, in the form of pensions for people suffering from AIDS following blood transfusions, people suffering from asbestosis and (currently being enacted) victims of medical accidents.

This legislation is not at all comparable in terms of financing and administration and the methods by which the benefits available are awarded, administered and reviewed: permanent invalidity or loss of independence are assessed from scales or grids specific to each law, except in the case of disability insurance where invalidity is directly assessed by the consultant doctor of the sickness insurance fund. Industrial accident or occupational disease benefits, invalidity pensions and allowances for disabled children are social security benefits, whereas benefits for disabled adults and elderly people who have lost their independence are solidarity benefits.

### **C. Benefits in the various fields of social security**

Benefits in the various fields of social security are as follows (presented by age)<sup>7</sup>:

#### ***a) benefits for children***

- allocation d'éducation spéciale (AES – special education allowance): awarded to parents caring for a child with a permanent incapacity of at least 80%. It is paid up to the age of 20.

A supplementary allowance is paid for children with a disability whose nature or severity entails particularly costly expenses or assistance from an outside person or continuing care of a highly technical nature. Unless they are in care homes, this allowance and supplementary allowance may be awarded to children having a permanent incapacity of at least 50% attending a special education scheme recommended by the CDES.

- allocation de présence parentale (APP – parental attendance allowance): awarded to any person who stops working or works fewer hours when the child for which they are responsible is the victim of a serious illness, accident or disability requiring constant supervision or substantial care. Beneficiaries are entitled to the APP for a period of four months, which can be renewed twice in a year.

#### ***b) benefits for adults***

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<sup>7</sup> When the criteria for and amounts of these benefits are included in MISSOC's comparative tables, they are not given here. The following sites could also be consulted: [www.service-public.fr](http://www.service-public.fr), [www.caf.fr](http://www.caf.fr), [www.apa.fr](http://www.apa.fr).

- pension d'invalidité (invalidity pension): offsets the reduction of earning capacity or capacity for work resulting from a disability not caused by an occupation. It is awarded, without means testing, to an insured person satisfying minimum registration and length of work conditions. Invalidity is assessed by the consultant doctor of the sickness insurance fund in respect of medical and occupational criteria. There are three bands for the amount of pension awarded. The third-band pension, which includes assistance from a "carer" for the performance of the essential activities of life, includes a supplement. The disability pension cannot be less than a minimum. It may be supplemented, with means testing, by the *Allocation supplémentaire du Fond spécial d'invalidité* (Supplementary Allowance of the Special Disability Fund) to bring its amount to the "minimum old-age pension". Under the general scheme, this social security benefit is financed by employers and employees and administered by the sickness insurance funds. The supplementary allowance, which is a solidarity benefit, is financed from the state budget.

- rente d'accidents du travail ou de maladies professionnelles (pension for accidents at work or occupational diseases): awarded to victims to compensate for the permanent incapacity with which they are left after their injuries have been consolidated. Like the other benefits in cash and in kind awarded under this insurance, the pension is not means-tested or subject to length of work criteria. When the victim has to call on a "carer" the pension is supplemented by an amount similar to the invalidity pension supplement. Under the general scheme, this social security benefit is financed by employers and administered by the sickness insurance funds.

- allocation aux adultes handicapés (AAH) (disabled adult's allowance): awarded, with means testing, to people having a permanent incapacity of 80% or more, or of 50 to 79% when the COTOREP recognises that they are unable to obtain a job (see point A). The AAH is awarded to people older than the age of entitlement to the AES up to the age of 60. This solidarity benefit is financed from the state budget and administered by the funds responsible for family allowances. The AAH may be combined with pensions of small amounts, in which case it is reduced by that amount. It also enables free affiliation to the general old-age insurance scheme.

A supplementary allowance is paid to people living at home to cover the additional expenses that they incur in leading an independent life.

- allocation compensatrice (compensation allowance): paid, with means testing (see AAH), to people having an incapacity of at least 80% who require assistance from a carer to carry out the essential activities of daily or who have to incur additional costs to work. It is available for people older than the age of entitlement to the AES up to the age of 60, when the beneficiary can choose to continue this benefit or to take a personal independence allowance. The COTOREP decides on the award of the allowance. It can be combined, where appropriate, with the AAH

or other pensions, with the exception of similar allowances under a social security scheme ("carers").

The *allocation compensatrice pour tierce personne* (ACTP – attendance compensation allowance) is 80% of the supplement paid for third-band invalidity. This amount varies from 40 to 70% when the disabled person requires assistance from a carer only for one or a number of essential activities of life or for essential activities without such assistance entailing a substantial loss of earnings on the part of the carer(s) or justifying their admission to a care home.

The *allocation compensatrice pour frais supplémentaire liés à l'exercice d'une activité professionnelle* (ACFP – compensation allowance for additional costs connected with the performance of work) is an amount expressed as a percentage of the above-mentioned supplement, calculated on the basis of the normal or exceptional costs incurred by a disabled person, and can be up to 80% of that supplement.

People in both situations receive the highest compensation allowance increased by 20%.

These two solidarity benefits are financed and administered by Departmental General Councils.

- The *garantie de ressources des travailleurs handicapés* (GRTH – disabled workers' income guarantee) for people whose "occupational performance is severely reduced" has two components:

- . a wage set by the employer in a sheltered environment on the basis of efficiency of work or subject, in the normal environment, to an approved reduction,
- . a pay supplement ensuring that the worker receives an income ranging from 70% to 130% of the statutory national minimum wage (SMIC, i.e. €708.15 to €1315.13 per month at 1 January 2002). For workers in the normal environment, this pay supplement is financed and administered by the *Fonds pour l'insertion professionnelle des travailleurs handicapés* (Disabled Workers' Occupational Integration Fund). In the case of workers in the sheltered sector, it is financed from the state budget and administered by the Departmental Directorates for Labour, Employment and Vocational Training.

### **c) benefits for the elderly**

In general, workers who, at the age of 60, are no longer able to continue to work without severely harming their health and who suffer permanently from a medically proven incapacity for work of at least 50% are entitled to full-rate pensions from the age of 60 ("*pension pour inaptitude*" (incapacity pension) calculated solely on the basis of the person's actual length of insurance). Other disabled people whose incapacity level is less than 50%, including those registered as "disabled workers", are covered by the common-law provisions on retirement pension payments.

On this basis, invalidity pensioners are entitled to payment of an old-age pension from the age of 60 and people in receipt of industrial accident or occupational disease pensions may combine their life pension with an old-age pension which is also payable on reaching the age of 60; they continue to receive a "carer" supplement. People who wish and are able to continue to work can nevertheless request a retirement pension under common-law conditions. Lastly, people in receipt of the AAH may also claim, on reaching 60, payment of any pension entitlements or, failing that, of an old-age *allocation spéciale* (AS – special allowance). In both cases, the benefit is topped up to the "minimum old-age pension". This is the two-stage common-law system, but paid from the age of 60 rather than 65. This solidarity benefit is financed by the old-age solidarity fund and administered by the Consignments and Loans Fund and partly by the national old-age insurance fund.

In old age, another specific benefit is available for the elderly:

- *allocation personnalisée d'autonomie* (APA – *personal independence allowance*): awarded to people aged 60 or more who are unable to cope with the consequences of the lack or loss of independence brought about by their physical or mental condition and who need help to carry out the essential activities of life or whose condition requires regular attendance. The APA is for severely or moderately dependent people, whether living at home or in nursing homes. The allowance is not means-tested and its amount is decided on the basis of the extent of the loss of independence and the resources of the beneficiary. The maximum scheduled amount of the allowance is paid if the beneficiary's resources are below a minimum amount. Above that, the beneficiary's financial contribution increases in regular stages up to 80% if they have a monthly income above a ceiling. The APA cannot be combined with benefits having similar purposes: supplements for assistance from a "carer" under a social security scheme, ACTP or any benefits paid by retirement pension funds for home care as part of their social action.

The APA is a solidarity benefit financed chiefly by the Departmental General Councils and by a proportion of the *contribution sociale généralisée* (CSG – general social contribution) and partly by the social action of retirement pension schemes. It is awarded and administered under the supervision of the Departmental General Councils.

These various benefits at different stages of life are supplemented by other social welfare benefits, including:

- Partial coverage by sickness insurance funds of technical apparatus and aids included on the TIPS (Joint Ministerial Tariff for Health Services) up to the ceiling of its tariff coverage and the reimbursement rate applicable,
- Allowances to fund housing under family benefits (*Allocation de logement familiale* – *Family housing benefit*) or solidarity benefits (*Allocation de logement*

*sociale* – Public housing benefit). These allowances may be supplemented by various benefits coming under social policy on housing and accommodation.

#### **D. Participation in social life**

The preamble and Article 1 of the 1958 Constitution set out a general principle of equality for all citizens, which has applied since 1798, in particular under the terms of Article 6 of the Declaration of Human and Citizens' Rights. The guideline law of 30 June 1975 protecting disabled persons and the Law of 12 July 1990 on the protection of people against discrimination based on their state of health or disability apply this principle in practice. Under the Criminal Code any distinction made between natural and/or legal persons on the grounds, among others, of disability, is punished as discrimination (Articles 225-1 to 225-4).

Nevertheless, and whatever the disability involved, the problem has more to do with integration than with discrimination. Discrimination on grounds of disability is difficult to compare with discrimination on grounds connected, for instance, with race, gender or nationality. In practice disabled people are in a disadvantaged situation not only because of their treatment, but also because of their impairment or incapacity. Moreover, the fact of being disabled does not necessarily entail special and/or identical treatment for everyone. It is preferable, taking account of the capacities of disabled people, to offer them, in keeping with their wishes and life plans, a set of services through which they can achieve these plans.

Whatever the disability involved, the aim is to promote integration into the ordinary environment with appropriate support measures to eliminate any discriminatory situation. Common-law exemption measures exist in many fields: for instance, in the taxation field, tax exemptions, allowances when calculating taxable income and some tax reductions are granted to disabled people, or to parents of disabled children, having an incapacity level of at least 80%.

From a social point of view, in the area of training and apprenticeship, there are specific measures allowing disabled people a third more time when sitting examinations or recruitment competitions. The provisions on apprenticeship may be adapted to take account of specific problems. Enterprises may be entitled to allowances offsetting the additional expenses incurred by the recruitment of a disabled apprentice or the partial loss of earnings that this may entail.

As regards employment, enterprises with over 20 employees have, since 1987, had to employ a quota of 6% of people registered as "disabled workers". They can also satisfy this obligation by contributing to a disabled workers' occupational integration fund, making use of the services of sheltered work facilities or taking part in training schemes. There are "assisted contracts" offering special assistance tailored to disabled workers to give them new opportunities for integration. In general, disabled people can benefit from a range of schemes derogating from

common law designed to promote and support the recruitment or the return to work of people facing social problems. These include work integration measures such as the "individual action plan for a new start", integration enterprises, temporary work integration enterprises, intermediary associations, personal social support and integration workshops. If a disabled worker is made redundant, the notice period may be doubled.

In the area of social protection, there are also specific measures, including:

- people who employ a home carer in order to carry out the essential activities of life are eligible for a reduction of the employers' contribution,
- the state may take partial responsibility for the allowances paid under occupational schemes for early retirement for people who have carried on hard trades and disabled workers subject to conditions of age (from the age of 55) and career length in particular.

Lastly, France has made disability one of its priorities. A draft guideline law will be tabled in 2003 before Parliament. A programme of concrete measures to improve the integration of disabled people, in particular in daily life, is also to be implemented at the beginning of next year.

## **IRELAND**

### **A. Definition**

Disability is defined in the Employment Equality Act, 1998 and the Equal Status Act, 2000 as including total or partial absence of bodily or mental facilities, chronic disease, whether manifest or not, learning and personality conditions. The definition of disability includes an illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour. It includes a disability which exists at present, or which previously existed but no longer exists or which may exist in the future or which is imputed to a person.

Disability is defined in the National Disability Act, 1999 as a substantial restriction in the capacity of a person to participate in economic, social or cultural life on account of an enduring physical, sensory, learning, mental health or emotional impairment.

## **B. Organisation of the legislation for disabled persons**

The Government is committed to advancing an equality programme to underpin activity in all policy areas in order to ensure a fair and inclusive society with equal opportunity. A comprehensive framework of equality legislation, institutions and mechanisms is now in place. This framework combines equality legislation and the infrastructure that gives effect to them.

The Employment Equality Act, 1998 prohibits discrimination on nine grounds, including disability, in relation to employment and vocational training. It allows for positive action measures intended to reduce or eliminate the effects of discrimination in order to facilitate integration into employment. The Equal Status Act, 2000 applies to the same nine grounds and prohibits direct and indirect discrimination in the provision of services, goods and facilities.

The Employment Equality Act, 1998 also provided for the establishment of the Equality Authority and the Office of the Director of Equality Investigation to underpin the statutory rights provided in equality legislation. The Office of the Director of Equality Investigations provides the main locus of redress of first instance in equality cases, other than dismissal cases. Dismissal cases are referred directly to the Labour Court. Decisions of the Director can be appealed to the Labour Court, and referred to the High Court on a point of law.

The National Disability Authority Act, 1999 provided for the establishment of the National Disability Authority (NDA) in June, 2000 as an independent statutory agency under the aegis of the Department of Justice, Equality & Law Reform to develop and monitor the implementation of standards in services for people with disabilities and to assist in the development of disability policy.

## **C. Benefits in the various fields of social security**

The following is a description of the range of benefits for which people with disabilities may qualify and the conditions of entitlement.

### ***Disability Benefit***

Disability Benefit (DB) is payable to qualified insured persons aged under 66 years who are unfit for work due to illness. The rate of DB payable depends on the claimant's family size, circumstances and earnings. Payment is made up of a personal rate and additional increases in the case of Qualified Adults and Children. Disability Benefit payments (excluding any increases for Qualified Children) are regarded as taxable income. However, DB payments for the first 36 days (6 weeks) in any tax year are exempt from tax.



### ***Invalidity Pension***

Invalidity Pension (IP) is payable to qualified insured people who are permanently incapable of work. In order to be regarded as being permanently incapable of work, a person must have been incapable of work for at least one year and likely to remain so incapable for at least a further year. In most cases applicants would have been in receipt of DB prior to claiming IP. Payment ceases if the person is awarded another social welfare pension, e.g. Old Age (Contributory), Retirement or Widow/er's (Contributory) Pension.

The rate of IP payable depends on the claimant's family size and circumstances. Payment is made up of a personal rate and additional increases in the case of Qualified Adults and Children. Income from Invalidity Pension is assessable for income tax purposes. However, if IP is the person's only income, it would be below the thresholds for the payment of income tax.

### ***Blind Person's Pension***

This is a means-tested pension which is payable to blind or partially sighted people who are 18 years and over and are so blind that they cannot perform work for which eyesight is essential or cannot continue in their ordinary occupation.

Blind Person's Pension continues to be paid for as long as the claimant satisfies the qualifying conditions. However, Blind Person's Pension ceases if the person is awarded certain other social welfare pension, e.g. Old Age (Contributory), Retirement or Invalidity Pension. The rates of payment depend on the claimant's family size, circumstances and means. Additional allowances are payable to Blind Pensioners who are living alone and pensioners aged 80 or over. Blind Person's Pension is fully taxable.

### ***Blind Welfare Allowance***

Blind Welfare Allowance is a supplementary allowance for blind persons under the Blind Persons' Act of 1920. The scheme is operated by the Health Boards, in conjunction with the National Council for the Blind of Ireland. The purpose of the scheme is to provide supplementary financial support to qualified blind persons. Blind Welfare Allowance is a Cost of Disability Payment. To be eligible to receive Blind Welfare Allowance, applicants must satisfy a means test and the following conditions:-

- They must undergo a medical assessment of their visual impairment.
- They must not be maintained in an institution.
- They must be unemployed, apart from work of a rehabilitative nature.

### ***Domiciliary Care Allowance***

The Domiciliary Care Allowance (DCA) is payable under Section 61 of the Health Act, 1970.

DCA is a monthly allowance paid by Health Boards. It is a Cost of Disability Payment which provides financial support in respect of eligible children up to the age of sixteen years who reside at home and whose disability is so severe that they require care and attention which is considerably in excess of that normally required by a child of the same age.

Eligibility is determined primarily by reference to the degree of care and attention required by the child rather than the type of disability per se. Applicants must also satisfy a means test which takes account of the means of the child (the means of the parents are not relevant).

### ***Mobility Allowance***

The allowance is payable under Section 61 of the Health Act 1970. Mobility Allowance is a Cost of Disability Payment with the objective of the provision of financial support to eligible people with a severe disability 16 years and over and under 66 years who are unable to walk or use public transport and is intended to enable them to benefit from a change in surroundings - for example, by financing the occasional taxi journey. To be eligible to receive this allowance applicants must satisfy a means test and the following conditions:

- Be over 16 years and under 66 years (However, an allowance, once granted, will be continued after this age as long as the other criteria for eligibility are met);
- Be living at home or maintained in any long-term institution;
- Be unable to walk, even with the use of artificial limbs or other suitable aids, or must be in such a condition of health that the exertion required to walk would be dangerous;
- Inability to walk has to be likely to persist for at least one year;
- Moving of the applicant must not have been forbidden for medical reasons;
- Be in a condition to benefit from a change in surroundings.

### ***Motorised Transport Grant***

The Motorised Transport Grant was established in 1968. It is a Cost of Disability Payment designed to provide financial assistance to persons with a severe disability who may need a car to obtain/retain employment; or, who are living in very isolated circumstances and have serious transport problems. To be eligible for the Motorised Transport Grant applicants must satisfy the following conditions:

- their disability must impede their use of public transport;
- they must hold a driving licence (full or provisional)
- they must be mentally and physically capable of driving
- the motorised transport must be a necessity in order for the disabled person to obtain/retain employment or have a transport requirement because of very isolated circumstances.

### ***Respite Care Grant***

A Respite Care Grant was introduced in 1999 for recipients of Carers Allowance. In 2000, entitlement was extended to beneficiaries of Domiciliary Care Allowance (DCA). The Grant currently payable is €635 where there is one eligible person in a family and to €1270 where there are two or more eligible people in a family. The purpose of the scheme is to provide a grant to carers towards the cost of respite care. The RCG is paid annually to beneficiaries of the Carers Allowance and/or Domiciliary Care Allowance.

### ***Occupational Injury Benefits***

The Occupational Injury Benefits scheme comprises a range of payments for people who are injured or disabled in the course of their work or who contract an occupational disease. There are no contribution conditions applying to the OIB schemes. The following are payable under the scheme:

#### *Injury Benefit*

This is a weekly payment payable to persons who are unfit for work due to an accident at work or who have contracted a prescribed work related disease. Payment can last for a maximum of 26 weeks from the date of the accident or the onset of the disease. If a person is still incapable of work after 26 weeks, they may be entitled to Disability Benefit or, if they do not qualify for DB or IP and are permanently incapable of work, Unemployability Supplement. Injury Benefit is taxable on the same basis as DB.

#### *Disablement Benefit*

Disablement Benefit is paid where an insured person suffers loss of physical or mental faculty as a result of an accident at work or through contracting a prescribed occupational disease. The level of the payment awarded depends on the degree of loss of faculty, which is medically assessed. Disablement Benefit differs fundamentally from other social welfare income support payments in that it is not an income maintenance payment. Accordingly, Disablement Benefit can be paid in addition to other social welfare payments such as DB and IP and can also be paid where a person continues to work.

Disablement Benefit is not payable during the 26-week period where Injury Benefit is payable. However, if a person continues to be able to work following the occupational accident or disease, Disablement Benefit can be paid from the Friday after the 4th day subsequent to the accident or contraction of the prescribed disease.

#### Unemployability Supplement

Unemployability Supplement (US) may be paid as an increase in Disablement Pension where the person does not qualify for any other social welfare payment, such as Disability Benefit, Invalidity Pension or Disability Allowance. The rate of payment for US is the same as for Disability Benefit and is taxable on the same basis.

#### Constant Attendance Allowance

Where the degree of disablement is assessed at between 50% and 100% and the person has been certified as being in need of constant care and attention, an increase in the weekly Disablement Pension, known as Constant Attendance Allowance, may be payable. Constant Attendance Allowance continues to be paid for as long as the person continues to require constant care and attention.

#### Death Benefits

If a person dies as a result of an accident at work or as a result of occupational disease, Death Benefit may be payable to that person's dependants. In addition, Death Benefit may be paid, regardless of the cause of death, if a person was getting Disablement Pension assessed at 50% or more at the time of death. Death Benefits include Widow's, Widower's and Orphan's Pensions and a Funeral Grant. Death Benefit Pensions for Widows, Widowers, Orphans and Dependant Parents are fully taxable.

#### Cost of Medical Care

People who are injured at work or who contract a prescribed occupational disease can claim the cost of certain expenses in respect of medical care and attention, which are not already covered by the Health Boards or under the social insurance based Treatment Benefit Scheme. These expenses include costs incurred in visiting doctors and on prescriptions, the cost of certain medical appliances and certain dental and optical treatment.

### **D. Participation in social life**

#### ***Anti-discrimination Legislation and Supporting Authorities/Agencies***

The Equality Authority is an independent body set up under the Employment Equality Act 1998. It works to eliminate discrimination and to promote equality of

opportunity. The Authority also provides information to the public in relation to the equality legislation and is charged with keeping the legislation under review. The Employment Equality Act, 1998 and the Equal Status Act, 2000 outlaw discrimination in employment, vocational training, advertising, collective agreements, the provision of goods and services and other opportunities to which the public generally have access on nine distinct grounds, including disability.

The National Disability Authority (NDA) is an independent statutory agency established under the aegis of the Department of Justice, Equality & Law Reform by the National Disability Authority Act 1999. NDA strives to ensure that the rights and entitlements of people with disabilities are protected.

### ***Social Inclusion: Care and Support***

Existing demands and future demographic change present significant challenges to the traditional patterns by which Irish society supported those in need of care, including people with disabilities. The Government is committed to a strategic approach to providing an infrastructure of care services that should seek to achieve the proper balance between the respective roles of families, the State, the private sector and voluntary organisations.

The Department of Health and Children is committed to carrying out a strategic review of existing service provision, in consultation with relevant interests, with a view to enhancing health and personal social services to meet the needs of people with disabilities. As well as that, the Government-sponsored National Disability Authority is developing Standards of Service in respect of people with disabilities.

- People with physical and sensory disabilities are enabled to live as independently as possible in the community through the provision of home support services, including personal assistance services.
- A National Physical & Sensory Disability Database is currently being developed which will identify the health and personal social service requirements of people with a physical and sensory disability over the next 5 years.
- The National Intellectual Disability Database provides information as the current level of service provision available to persons with an intellectual disability, in addition to current and future needs over a 5 year period.
- Day Activity Services are also provided for people with disabilities who may not be availing of Sheltered Work or Rehabilitative Training Services. Day Activity Services are essentially care and therapeutic services that focus primarily on an individual's personal support and development needs. The range of supports in Day Activity Services usually includes occupational therapy, speech and language therapy, basic numeracy/literacy, as well as social and recreational activities.

### ***Delivering Equal Opportunity and Mainstreaming Policymaking***

Equality is a key goal which must underpin activity in all policy areas in order to ensure a fair and inclusive society with equal opportunity. A comprehensive framework of equality legislation, institutions and mechanisms is now in place. This framework comprehends the Employment Equality and Equal Status Acts, together with the infrastructure that gives effect to them (the Equality Authority, the Office of the Director of Equality Investigations and the National Disability Authority). The Irish government is committed to an integrated approach across all Departments and State agencies to policy development and service provision for people with disabilities.

### ***Developing Training/Employment Opportunities***

In Ireland, the Department of Health and Children has responsibility for rehabilitative training. Rehabilitative training focuses on the development of an individual's core personal capacities i.e. life-skills, social-skills etc. to each individual's level of capability.

The Department of Enterprise, Trade and Employment is responsible for vocational training, which is training in a specific employable skill to a predetermined level of certified competence. Going forward, the provisions of services will be evaluated in order to maximise the potential for improving the overall effectiveness and efficiency of labour market services for people with disabilities.

Public Service bodies are required to achieve a 3% target level for the employment of people with disabilities arising from a Government-led positive action programme. A number of initiatives have been undertaken to support public service bodies to progress attainment of the target, including information publications, seminars and research.

## **ICELAND**

### **A. Definition**

An official definition of disability does not exist but various types of disabilities and invalidity are defined indirectly or partly reflected in different legislations and regulations and by the kind of benefits granted.

## **B. Organisation of the legislation for disabled persons**

### ***Disabled and handicapped persons***

The legislation is administered by the state, with implementation in the hands of the health authorities and social affairs authorities.

On the one hand, this responsibility (regarding disabled persons) is borne by the Ministry of Health and Social Security, with the State Social Security Institute and its agents all over the country in charge of implementation. On the other hand, the responsibility (regarding handicapped persons) is borne by the Ministry of Social Affairs, with implementation handled by six regional Handicapped Persons' Affairs offices in various parts of the country; these offices are directly under the ministry. In five regions in Iceland the local authorities have joined together and made agreements with the ministry under which they have taken over these services, and the regional offices in those regions have been closed.

At the same time, under the Local Authorities' Social Services Act, no 40 of 1991 the local authorities are obliged to provide disabled and handicapped persons with basic services in the same way as other persons.

Three separate statutes address the rights of the disabled and handicapped in Iceland, i.e. the Social Security Act, no 117 of 1993 the Social Assistance Act no 118 of 1993 and the Handicapped Persons Act no 59 of 1992.

The three statutes mentioned above are administered by two government ministries. Two of them, the Social Security Act and the Social Assistance Act, are administered by the Ministry of Health and Social Security and are mutually inter-related, and both deal with payments of benefits to disabled persons.

The third statute, the Handicapped Persons Act, is different in nature. It applies to a narrower group of people, the handicapped, and covers the social services provided by the state and municipalities to the handicapped, i.e. services that enable them to live normal lives. The scope of the act is limited strictly to the handicapped, i.e. those who require permanent services on a permanent basis in order to be able to live normal lives.

This last act is administered by the Ministry of Social Affairs. It is not directly related to the Social Security Act, though in a general sense the two are related.

The main types of service are:

- assistance to enable adults with handicaps to live independently in their homes,
- placement in group homes,
- placement of children in special children's homes when, due to their handicaps, they are unable to live with their parents

- assistance to the parents of handicapped children to enable the children to live with them for as long as possible
- short-term placement of children to relieve the strain on their homes
- sheltered employment
- assistance at work in positions on the open labour market
- day service instead of work
- travel assistance

### ***Co-operation***

There is no formal co-operation between the ministries of Health and Social Security, on the one hand, and Social Affairs, on the other, regarding the implementation of the legislation on disabled and handicapped persons. This is because the statutes cover different topics and do not overlap. The Handicapped Persons Act covers the social services provided by the state to the handicapped, i.e. services that enable them to live their lives in the most normal way possible, but does not cover payments. The other two statutes cover payments of benefits, and are closely related, both being applied by the same institution, the State Social Security Institute.

### **C. Benefits in the various fields of social security**

All residents aged 16-66 inclusive are entitled to an invalidity pension from the national pension scheme, according to the Act on Social Security if conditions are fulfilled. In addition employees and self-employed persons aged 16-70 must pay contributions to a supplementary pension fund which will pay invalidity benefits in case of incapacity and if conditions of the pension fund are otherwise fulfilled.

Conditions of entitlement to benefits according to the Act on Social Security are:

Age between 16 and 67 years, at least 3 years of residence prior to submitting the claim and permanent disability is assessed at a minimum of 75% as a result of a medically recognised disease or invalidity.

Persons who have lost at least one half of their working capacity and fulfil all conditions other than those relating to the degree of invalidity may be entitled to an invalidity allowance.

Determining factors for the amount of invalidity benefits, which are flat-rate benefits are incapacity level, residence period and income. Pension rights are calculated pro rata according to periods of residence. Residence period of 40 years gives entitlement to a full pension amount. Maximum pension amount consists of a full basic pension, full pension supplement and full additional pension supplement. This amount is reduced when annual income criterion exceeds a certain level and is withdrawn when annual income criterion exceeds a certain



amount. Different amounts apply for a single person and for married or co-habiting couples.

According to the social assistance act various social assistance benefits may be granted in addition to the national pension benefits in special circumstances or when shown that the beneficiary cannot support himself without it. Examples are a household supplement for a single person or a supplement for high medical costs.

An applicant for a national pension may have to undergo an appropriate rehabilitation program before a disability assessment is made. A rehabilitation allowance according to the social assistance act may in that case be paid for a certain period after per diem benefits have ceased until it is possible to determine the extent of disability.

The State Social Security Institute can also make an agreement with corporations to employ disabled persons receiving benefits. The Social Security Institute refunds from 25% to 75% of the wages and the pension benefits are reduced (is available according to the Disability Act).

## **D. Participation in social life**

### ***Non-discrimination***

No specific legislation has been passed prohibiting discrimination.

On the other hand, the Handicapped Persons Act, No. 59/1992 (and before it the Act No. 41/1983) are deeply coloured by the principle of non-discrimination. The principle of equality is guaranteed in the Constitution as amended in 1995 . It may be mentioned as well that Iceland has ratified the Human Rights Convention and other main international conventions in the field of human rights.

### ***Measures to improve and/or secure the participation/total integration of persons with disabilities***

#### ***For handicapped persons:***

Many types of measures are available.

In accordance with the Handicapped Persons Act, a great deal of emphasis has been placed on enabling adults with handicaps to live independently in the same way as other people. They receive the necessary support for this both from the state under the Handicapped Persons Act and from the local authorities under the Local Authorities' Social Services Act. The number of persons living in flats with supporting services as required is increasing. These services consist both of services within the home and also outside it so as to ensure that handicapped persons do not become socially isolated and to enable them to participate in life in the same way as other people, i.e. go shopping and attend cultural and social

events. Emphasis is placed on transport services for the handicapped in connection as part of these services.

Handicapped persons live also in group homes, each designed for a small number of people, where they are ensured adequate private living space. Placement in large institutions does not accord with government policy, though some such institutions established in former times still exist.

Government policy is that handicapped children should live in their parents' homes and attend kindergartens and ordinary junior and senior schools wherever possible. Their homes receive support, both in the form of benefit payments under the Social Security Act and also of services provided to the home and short-term placement of the children to relieve the pressure on the home. Within the school system, handicapped children have the right to special support.

Another measure provided for in the Handicapped Persons Act is assisted employment in the open labour market, and this is applied wherever possible. Places of sheltered employment also exist.

### **Reforms**

This issue is currently being addressed and it is not possible to give further details at present.

Below please find a link to the Act on the affairs of the handicapped of 1992 and the Local Authorities Social Services Act of 1991 translated into English

<http://felagsmalaraduneyti.is/interpro/fel/fel.nsf/pages/english-index>

Below please find a link to the Act on Social Security of 1993 and the Act on Social Assistance of 1993 translated into English

<http://ministryofhealth.is/interpro/htr/htr.nsf/pages/forsid-ensk>

## **ITALY**

The rights of disabled people and their assistance and social integration are regulated by special legislation.

In this legislation, disabled people are considered to be "persons presenting physical, psychological or sensory infirmities, whether stable or developing, causing them problems with learning, relationships or occupational integration likely to bring about a disadvantageous and marginalising process".

This definition is set out in the framework law on disabled persons – Law 104/92, enacted in 1992, which, by repealing fragmentary and sector-based legislation,

highlighted the far-reaching cultural change that had taken place in the social and political context.

Law 104 in practice introduced measures and services in the various areas of the social environment in which disabled people live or with which they come into contact.

Moreover, on 28 July 2000, the Italian Government approved the Government Action Plan for Disabled Policy 2000-2003 with a view to building on proposals to promote initiatives and to formulate the policy options to be followed – both as regards legislation and the practical choices made by the various authorities – in order to provide disabled people with the best possible level of integration and a better standard of living.

The aim of the Action Plan is to place the provisions of Framework Law 104/92, and the principles and goals on which it is based, on a concrete footing.

The fundamental principles that the Government wishes to respect and promote in measures and action for disabled people are as follows:

- non-discrimination, in the sense in which a society containing a range of differences has to be made able to benefit culturally from all the values of that society;
- equal treatment, i.e. the Government's overall action has to be geared to removing handicaps, i.e. the social obstacles preventing full participation in community life;
- serious situations. The strategic aim of this type of action is to resolve the situations of need of persons with very severe disabilities and their families.;
- actual integration. On the basis of this principle, legislation has effectively to ensure that the human and social rights inherent in the various situations of disability can actually be exercised. To move in this direction, supervision of the application of laws, financing and any legal processes guaranteeing these rights have to be strengthened.

The Government Action Programme also makes explicit provision, among its undertakings, for the conduct of statistical and fact-finding surveys of disability which are a prerequisite if laws are to be correctly applied and resources are to be appropriately allocated.

The legislative framework surrounding disabled people was further improved in 1999, when Law 68/99, known as the "Regulation on the right to work of disabled persons", was approved, thereby reforming the whole process of compulsory placement from 18 January 2000.

The main goal of this law is to promote the integration and occupational placement of disabled people in the working world, with targeted support and placement services.

Despite the considerable legislative efforts made to improve social integration, it is nevertheless estimated that only 150 000 disabled people are employed, mostly men between the ages of 15 and 44 (32%); the figure for women, again between the ages of 15 and 44, is 19%.

The reform discussed above applies to all disabled groups, apart from those already employed on the basis of the above law.

When the reform comes into force, the previous categories of disability, regulated by a 1968 framework law, will cease to exist; in addition, all persons with physical and mental infirmities having a disability which reduces their capacity to work by over 45%, as well as non-EU nationals regularly established in national territory, will be able to benefit from the new regulations on compulsory placement, once they have been tested by the Medical Commissions set up in local health units.

Disabled people include:

- disabled workers, having an invalidity of more than 33% certified by INAIL (Istituto Nazionale Assicurazione Infortuni sul Lavoro e Malattie Professionali [National Insurance Scheme for Accidents at Work and Occupational Diseases])
- the non-sighted;
- war disabled, civilian war disabled and service disabled;
- orphans and surviving spouses;
- victims of terrorist acts or acts attributable to organised crime;

All these people must possess a minimum capacity for work and must not pose a risk to themselves or others or to facilities; they must also be aged between 15 and retirement age.

Moreover, by reforming compulsory placement, Law 68/99 mentioned above made provision, to help employers, for partial relief from social security contributions and for financial measures to support any adaptation of work stations and working conditions to the disability of the worker recruited. The relief is proportional to the severity of the disability and facilities are financed by the National Fund for the Right to Work of the Disabled.

Obviously, all the legislation for disabled people is geared towards achieving their core rights: eliminating the causes of invalidity, promoting independence and achieving social integration are all ways of achieving these rights. In practical terms, this is underpinned by a range of objectives linked chiefly with opportunities for the rehabilitation and integration of disabled people into society through appropriate psychological and psycho-educational support for both disabled people themselves and their families. The help provided by bodies and associations for disability prevention and support is paramount in this respect, as is the de-

velopment of scientific, genetic and biomedical research, chiefly under programmes agreed with public and private institutions and in particular universities.

A very important category of measures for disabled people is the prenatal and early diagnosis of infirmities which is carried out under the health screening set out in the law establishing the Italian national health service. These initiatives are to be pursued with assistance from the Regions and the national health service's own or approved facilities.

As regards the participation of disabled people in social life, an *ad hoc* law was enacted by the Government in November 2000: Law 328 of 8 November 2000 "Framework law for the achievement of the integrated system of social measures and services", whose aim is to "*promote action to support quality of life, equal treatment, non-discrimination and urban rights, and to prevent and reduce circumstances of infirmity, individual and family need and hardship resulting from inadequate income, social problems and loss of independence*".

To achieve these institutional goals, the Italian state is also calling on trade union organisations, social associations and associations offering support for their members.

A final aspect, in relation to the social integration of disabled people, is school integration, where the aim is to develop the potential of disabled people in the areas of learning, communication, relationships and socialisation. School integration also depends on coordinated planning by school and health, sport and social welfare services.

In order, moreover, to achieve equal treatment and non-discrimination for disabled people, the construction of public and private buildings open to the public must comply with the rules in force on accessibility and the removal of architectural barriers. This is monitored by mayors who issue a certificate of practicability and habitability for completed construction works.

In general, Italian nationals, EU nationals and foreign nationals regularly established in Italy are eligible for benefits and services under the integrated system of social measures and services. People who are poor, or on limited incomes, or fully or partly unable to provide for their own needs as a result of a physical or mental disability have priority access.

In addition to measures to bring about an improvement of life and social integration, disabled persons are also eligible for disability benefits linked to the nature and extent of their disability, their remaining overall personal capacities, and the efficiency of rehabilitation treatments.

In the case of beneficiaries of pension benefits for disabled people, a clear line is drawn between those in receipt of welfare benefits (civil invalidity and similar benefits) unconnected with the practice of an occupation, and social security

benefits (invalidity benefits and allowances) connected with the practice of an occupation.

In line with this principle of separation of welfare and social security costs, the pensions and benefits available for disabled people have, moreover, been reorganised by a Decree. The principles on which it is based can be summarised as follows:

- regrading of allowances and pensions which does not entail any reduction of current payments and which takes account of the functions that these payments satisfy;
- the principle of the minimum income for total disability together with pensions to supplement the loss of earning capacity resulting from a disability;
- an allowance to promote independent living and communication, proportional to the severity of the disability, and to enable constant attendance and assistance for people whose independence has been severely restricted.

## LIECHTENSTEIN

### A. Definition

There is no standard definition of the term "disability" in Liechtenstein. Instead, the definition differs according to the type of benefit in question. The list below is therefore not exhaustive (and is given merely by way of illustration).

In invalidity insurance, for example, disability is deemed to be incapacity for work caused by the impairment of physical or mental health, as a result of congenital defects, illness or accident, and anticipated to be permanent or relatively long-lasting. Unemployed people under the age of 20 whose physical or mental health is impaired are deemed to be disabled if the impairment of their health will probably result in incapacity for work.

The "degree of disability" is a vital factor in invalidity pension claims. This degree of disability is not a medical concept but an economic one. Disability is assessed by comparing the income a disabled person can be expected to earn (*Invalideneinkommen*) with the income earned as a healthy person (*Valideneinkommen*). The "disability-related loss of earnings" (difference between non-disabled person's income and disabled person's income) as a percentage of the non-disabled person's income corresponds to the degree of disability (a quarter pension, half pension or full pension is paid according to the degree of disability). To give an example: disabled person's income CHF 3 000, non-disabled person's income CHF 5 000. Loss of earnings CHF 2 000 = 40% of CHF 5 000, therefore degree of disability 40%.

The definition of disability in the field of accident insurance (this applies, of course, only to disability caused by an accident) and in company welfare schemes is similar or identical to this invalidity insurance definition.

Different definitions of disability can, however, also be found in one and the same area of the law (invalidity insurance). For example, a pension claim under invalidity insurance is valid only for a degree of disability of at least 40% (in accident insurance schemes, pensions may also be payable for a lower degree of disability). A claim for retraining under invalidity insurance, on the other hand, requires only a degree of disability of 20% (in addition to other conditions). Entitlement to other invalidity insurance benefits does not depend on the degree of disability, however: aids such as wheelchairs are provided if the person concerned needs one.

Disability is again defined differently for another type of benefit. Entitlement to *Hilflosenentschädigung* (attendance allowance) (from age 2 until death), for example, depends on whether, and to what extent, a person requires the permanent and considerable help of others, or personal supervision, for daily activities. Daily activities as defined here for the purpose of assessing the need for help from others and hence the need for attendance are deemed to be: 1. dressing, undressing; 2. getting up, sitting down, lying down; 3. eating; 4. personal hygiene; 5. toileting; 6. mobility (indoors or outdoors) and communication.

Classification scales are frequently used as a basis for *Integritätsentschädigung* (compensation for impairment) in accident insurance law (a specific lump sum is payable for loss of an eye, a hand, etc.).

In the case of *Blindenbeihilfen* (blind persons' allowances) disability is defined as diminished visual acuity. The amount of allowance paid depends on the degree to which visual acuity is diminished (whether the person is totally blind, practically blind or has low vision).

To summarise, there is therefore no standard definition of invalidity in Liechtenstein. Invalidity is defined differently in Liechtenstein depending on the benefit in question.

## **B. Organisation of the legislation for disabled persons**

In Liechtenstein the legislation for disabled persons is enshrined in a large number of benefit laws. These include, in the broadest sense:

- Invalidity Insurance Act with various integration measures, pensions, and what are known as "collective benefits"

The integration measures include: wide-ranging vocational measures, salary supplement (to employers with disabled employees), temporary suspension of pension payment on request, aids (for example wheelchairs, but also conversion of private accommodation to suit the disabled person's needs), daily cash bene-

fit in lieu of income during integration measures, and the reimbursement of expenses during integration measures. The collective benefits include building costs and maintenance allowances for residential homes or sheltered workshops, financial assistance for special education in special schools or in a regular school, etc.;

- Retirement and Surviving Dependants Insurance Act (aids for the elderly);
- Supplementary Allowances for Retirement, Surviving Dependants and Invalidity Insurance Act (attendance allowances; special medical integration measures with the emphasis on the treatment of particular congenital defects; financial assistance for pensioners in economically difficult circumstances to cover medical costs, dental costs, aids, etc.);
- Blind Persons' Allowances Act;
- Company Staff Welfare Act (pensions for the disabled; known as the "Second Pillar", supplementing the invalidity insurance pensions known as the "First Pillar");
- Compulsory Accident Insurance Act (pensions, aids, treatment, compensation for impairment);
- Health Insurance Act (daily sickness allowance, outpatient or inpatient medical care and domiciliary medical care benefits);
- Supplementary Welfare Act (job-finding, care, sickness benefits, counselling, guidance, accommodation in local residential communities or homes, etc.);
- Schools Act (in the field of special education in special schools, and the integration of disabled children into regular schools).

The laws described in points 1 to 4 are implemented by the AHV (retirement and surviving dependants insurance scheme) and IV (invalidity insurance scheme), whose functions are combined. They are autonomous public-law corporations and are subject to government supervision.

The areas of the law referred to in points 5 to 7 are implemented by private government-approved agencies in accordance with the statutory provisions. These private agencies are also subject to government supervision. The health and accident insurers are also members of a common association.

The Supplementary Welfare Act referred to in point 8 is implemented by the *Amt für Soziale Dienste* (Office for Social Services) in collaboration with numerous private (government-backed) institutions.

Responsibility under the Schools Act (point 9) lies with the education authority. Special schools are private agencies but receive government backing for the services with which they are tasked.



This broad division of responsibility is rather surprising in such a small country as Liechtenstein. The reasons for this are historical. The individual strands evolved only gradually. The First Pillar (invalidity insurance) was, for example, created in 1960 (in parallel with Switzerland). The Second Pillar (company staff welfare) was not introduced into Liechtenstein until 1989 (four years after Switzerland). Before the compulsory requirements of the Second Pillar, however, there were already voluntary company staff welfare schemes in existence in many cases. The existing structures were therefore taken over (health insurance and accident insurance also evolved in a similar way).

There are no major gaps in the range of benefits as a result. Inevitably, however, there are a few gaps, some of which are deliberate (for example, Liechtenstein has no comprehensive dental insurance).

Duplicate benefits are a frequent occurrence, however, and there are therefore comprehensive coordination arrangements to avoid over-insurance. It would go beyond the remit of this report to list these arrangements, so just one example will be mentioned. If accident insurance and invalidity insurance pensions are both payable, accident insurance benefits are reduced so that the insured receives no more than 100% of lost earnings. In practical terms, coordination takes place by an exchange of information between the individual agencies. However, apportionment to different agencies requires assiduousness on the part of the appropriate institutions if they are to trace the links.

One disadvantage is, however, that the division of responsibility can also lead to delays in the processing of benefit applications (it may, for example, be clear that ultimately accident insurance or invalidity insurance is responsible for payment of a specific benefit, but it is first necessary to clarify which agency is responsible).

### **C. Benefits in the various fields of social security**

*The main benefits here are the rehabilitation benefits.*

#### **Medical rehabilitation**

Medical rehabilitation is mainly the responsibility of healthcare insurance, which is obligatory for all residents irrespective of age. The individual categories of benefit can be grouped as follows:

- examinations, treatment and care provided by a doctor, chiropractor or, on medical orders, by other healthcare professionals, for example physiotherapists or healthcare or nursing care (Spitex) organisations, including the medically prescribed drugs, medicinal products and analyses
- examinations, treatment and care provided to hospital inpatients or to people who are hospital inpatients for part of the time (in a general ward)

- health resort taxes for medically prescribed courses of treatment at health resorts
- patient transportation, where medically necessary because of the insured's condition
- contributions towards the expenditure exceeding the normal cost of living that is incurred in connection with domiciliary care, provided that this is medically approved and that a hospital or psychiatric hospital stay and care would be needed without the provision of domiciliary care.

All these healthcare insurance benefits (apart from the health resort taxes) are paid for an unlimited period. An excess has to be borne by the insured according to age and the insurance scheme selected.

The accident insurance scheme (and not health insurance) is responsible for the medical rehabilitation of employed persons after accidents, non-industrial accidents and occupational diseases. Every employer has a duty to insure his Liechtenstein-based employees against industrial accidents and occupational diseases. People working for an employer for at least eight hours a week also have to be insured for non-industrial accidents. Part-time employees working eight hours or less a week are only insured for industrial accidents. Self-employed persons are not compulsorily insured but may take out voluntary insurance. The accident insurer provides the following benefits:

- outpatient treatment by a doctor, dentist or, if ordered, other healthcare professionals
- drugs and analyses prescribed by a doctor or dentist; inpatient stay in a general hospital ward
- medically prescribed periods of convalescence and courses of treatment at a health resort
- aids to compensate for physical impairment or malfunctions
- the necessary search and rescue costs and the medically necessary travel and transportation costs
- the costs incurred in conveying a body to the funeral location and funeral costs.

In a benefits sub-category there is a third responsibility for medical rehabilitation. Under the Supplementary Allowances for Retirement, Surviving Dependents and Invalidity Insurance Act, various benefits are provided under the heading of "special medical integration measures". The emphasis is on the treatment of very special congenital defects (after the person reaches the age of 20, the health insurance scheme again has to assume responsibility). Medical integration measures for adults are a very rare occurrence in this case (a relic from the past). These measures are no longer designed to provide actual treatment for the condition, however. They are provided after treatment of the illness or accident has

been completed, once an unstable pathological state no longer exists and the patient's condition has been stable for at least a year (in the case of cataract operations, to give a typical example). This scheme is financed solely from taxes, and all residents are covered. The assistance covers the treatment provided as hospital or domiciliary care by doctors themselves or, on their orders, by medical auxiliaries, as well as the issue of the drugs prescribed by the doctor. In the field of domiciliary care (for children with congenital defects), flat-rate benefits are also paid (depending on the degree of disability) if the care and guidance is not given by medical staff (but by family members, for example).

Merely for the sake of completeness, it should also be mentioned in the context of medical rehabilitation that "sickness costs" (doctor, dentist, cost of aids, health insurance excesses, etc.) are assumed for pensioners in economically difficult circumstances under the Supplementary Allowances for Retirement, Surviving Dependents and Invalidity Insurance Act, where these are not covered by insurance benefits.

### ***Vocational rehabilitation***

The invalidity insurance scheme is mainly responsible for the vocational rehabilitation of disabled people. All residents and all employed persons (employees and the self-employed) are insured. The range of benefits is extensive:

- vocational guidance
- career advice
- job-finding
- trial periods of work in specialised *Abklärungsstellen* (vocational aptitude assessment centres) and also (without the employer incurring any employment costs) in the private sector
- initial vocational training (for people disabled from birth or incapacitated when young)
- vocational retraining (e.g. for people who can no longer practise their previous occupation owing to disability)
- capital assistance for the self-employed, required because of their disability
- salary supplement
- suspension of pension payment on request
- various aids (including special workplace aids or workplace adjustments).

The benefits newly introduced from 1 May 2001 (salary supplement, trial period of work, suspension of pension payment on request) are described in rather more detail under d).

Government institutions other than the invalidity insurance scheme have secondary responsibility in the field of vocational rehabilitation (public placement service in conjunction with private placement services, the *Berufsbildungsamt* [Vocational Training Office], the *Berufsberatungsstelle* [Vocational Guidance Centre] and the *Amt für Soziale Dienste* [Office for Social Services] with some of its functions also transferred to private agencies).

### ***Social rehabilitation***

Social rehabilitation is primarily the responsibility of the Office for Social Services (Supplementary Welfare Act) with its extensive functions (counselling, guidance, integration, mobile services, etc.). The Office for Social Services works closely with various (government-backed) institutions in this field in particular.

## **D. Participation in social life**

Various measures aimed at social integration are regularly discussed (e.g. in the case of public buildings that are to be built so as to be suitable for disabled people). In the European Year of People with Disabilities, there will naturally be a greater emphasis on these. Added to which, Liechtenstein always keeps a close eye on what its neighbours are doing in this respect (the Swiss Law on Equal Opportunities for Persons with Disabilities is a good topical example of this).

Liechtenstein has, however, also just launched the latest comprehensive amendment of invalidity insurance legislation introduced on 1 May 2001 under the heading "invalidity insurance integration measures". A few of the innovations are outlined below.

### ***Salary supplement***

People with at least a 40% degree of disability are entitled to a salary supplement. The salary supplement is paid to the employer and enables the enterprise to pay the usual company salary for a specific position even if the disabled person does not have the same output as a non-disabled person. Salary supplements are granted both when disabled people are recruited for the first time and when they continue in the same employment they were in prior to their disablement. The amount of the salary supplement is fixed on a case-by-case basis and depends on the shortfall in the disabled person's output at the workplace in question. In principle, salary supplements and invalidity pensions can be paid at the same time, but in most cases payment of a salary supplement results in the invalidity pension being reduced or withdrawn.

### ***Trial period of work***

Fixed-term trial periods of work can be provided to determine whether disabled people are fit for work. This trial period serves to determine whether a specific person can be considered for a specific activity. Trial periods of work can be

provided at specialised institutions as well as in private-sector or public enterprises. The invalidity insurance scheme pays a daily cash benefit during the trial period, so the enterprise incurs no costs. The daily cash benefit is generally paid to the disabled person. If, however, the enterprise pays the disabled person an appropriate salary, the daily cash benefit is paid to the employer.

### ***Suspension of pension payment on request***

Disabled people drawing an invalidity pension can request that their pension payments be temporarily suspended or reduced. These payments may be suspended or reduced if, for example, a person wishes to try to return to work. The suspension or reduction of pension payments can be cancelled at any time at the relevant person's request, although if, within three years of the suspension or reduction, the person does not request that payment of the pension be resumed, then the entitlement thereto lapses.

These new types of benefit have not been applied very often, however. It is nevertheless still too early to make changes, since no empirical figures are available. For the time being it remains to be seen whether these measures will ultimately be successful.

## **LUXEMBOURG**

### **A. Definition**

There is no single and coherent definition of the term "disability" or "disabled person" in Luxembourg. The various laws and regulations setting out benefits for disabled people define their target groups in different ways. In most texts, the cause of the disability and incapacity or the restriction of the activity of disabled people are criteria for defining who is covered. Some texts also relate to a specific age group or type of disability or combine factors such as the type or cause of the disability and the age of the beneficiary to determine the criteria for the award of a benefit.

In most laws and regulations, the cause of the disability is a criterion for defining who may be eligible for a benefit. Causes of disability include chronic disease, diseases recognised as occupational and infirmity, although there is no reference to any specific aetiology of the factors triggering the disease or disability. The Law of 24 April 1991 to improve contributory scheme pensions, and covering the invalidity pension, includes the notion of "exhaustion" alongside those of disease and disability in the criteria for the award of the benefit. Under the amended Law of 12 November 1991 on disabled workers, such workers are recognised as disabled if their capacity to work is restricted "by disease, natural or accidental

causes ...". This Law draws a line between disabled people and people who are victims of war or accidents at work.

Most laws and regulations either do not specify the type of disability, or list the various possible forms of the disability, for instance the amended Law of 12 November 1991 on disabled workers which states that disabled worker status may be given to people who have a "physical, mental, sensory, psychological and/or psychosocial handicap". Very few texts set out specific measures for a group of disabled people suffering from a specific disability.

Age is used as a factor to differentiate between children and young people and adults in legislative measures on school attendance and work by disabled people. The amended Law of 19 June 1985 on family allowances which sets up the national family allowances fund sets an age limit of 18 for the award of family allowances or for their continuation if the disabled person is unable to provide for his or her needs. The age of majority is also a criterion for the award of the benefits for disabled people under the amended Law of 29 April 1999 setting up the right to a guaranteed minimum wage.

In addition to factors of age and nature and cause of the disability, some laws or regulations on disabled people set out a degree of invalidity or restriction of physical or mental capacity varying between a 30% reduction of capacity for work and a 70% reduction of the physical or mental capacity of a person. The need for assistance, for instance a substantial and regular need for assistance from a carer is also used as a criterion for defining disability.

In general, the definitions of the notion of disability used by laws and regulations on disabled people follow the approach taken by the WHO definition in that they list one or a number of impairments which are the cause of an incapacity entailing a situation of disability.

## **B. Organisation of the legislation for disabled people**

Luxembourg has no framework law covering all the benefits for which disabled people may be eligible. The benefits in question are set out in laws and regulations which relate exclusively to disabled people or which do not differentiate between disabled and non-disabled people.

Policy on disabled people is supervised in Luxembourg by the Ministry of the Family, Social Solidarity and Youth. With a view to integration and in keeping with the principle of mainstreaming, measures for disabled people cover fields as varied as health, education, labour, social security, transport, etc., which are supervised by the relevant ministerial departments. The task of the Ministry of the Family, Social Solidarity and Youth is to ensure that disabled policy is consistent, to coordinate the various measures and to introduce, where necessary, any measures needed under the National Action Plan for Disabled Persons published in 1997.

This coordination task more particularly covers the fields set out in the Grand Ducal Order of 11 August 1999 setting up the ministries, which states that, in the area of disability, the Ministry of the Family, Social Solidarity and Youth is responsible for the following: "day and/or night care, training, information, consultation, work, rehabilitation, early aid and home care services for disabled people, the integration of disabled people into occupational life, the disabled workers' service and sheltered workshops". Measures to promote the employment of disabled people are supervised jointly by the Ministry of the Family, Social Solidarity and Youth and the Ministry of Labour and Employment. In the case of sheltered workshops, for instance, the Ministry of the Family, Social Solidarity and Youth is responsible for government accreditation of these services and the Ministry of Labour and Employment for their operation and for state financing of the cost of facilities.

Coordination in the disability field also takes place at a joint ministerial level and through contacts between the state and private associations. Only measures for people with psychological disabilities are the task of the Ministry of Health.

The various areas of regulation are divided as follows between the ministerial departments:

***Ministry of the Family, Social Solidarity and Youth:***

- Disabled persons' service: coordination and application of disabled policy, government accreditation of managers of services for the disabled (pursuant to the Law of 8 September 1988 regulating dealings between the state and organisations working in social, family and treatment fields), and cooperation with state-accredited services for disabled people;
- National Family Allowances Fund: family allowances;
- Disabled Workers' Service: occupational integration measures;
- National Solidarity Fund: guaranteed minimum income, allowance for severely disabled persons.

***Ministry of Health***

- Policy for people with psychological disorders; government accreditation of managers of services for persons with psychological disabilities; cooperation with state-accredited services for psychologically disabled people.

***Ministry of Social Security***

- Medical checks for social security purposes in order to make decisions on the award of social security benefits;
- Dependency insurance.

### ***Ministry of Education, Vocational Training and Sport***

- Special education; specialist centres and institutes; vocational preparation centres, child guidance centres, outpatient rehabilitation service; medico-psycho-educational commission offering guidance on school attendance by disabled children.

### ***Ministry of Labour and Employment***

- cooperation with accredited sheltered workshops for disabled people;
- employment authority – Disabled Workers' Service: occupational integration measures.

### ***Ministry of Transport***

- Driving Licence Service: driving licences, parking permits for the disabled;
- transport for special education and occupational integration.

### ***Ministry of the Interior***

- Special cards for public transport;

### ***Ministry of Finance***

- Administration of direct contributions: tax relief.

## **C. Benefits in the various fields of social security**

There is no specific benefit for disabled people in the Luxembourg social security system. Disabled people are included in the general scheme and may be eligible for all social security benefits in the same way as all other insured persons.

### ***Medical rehabilitation***

#### ***CRRF (Functional re-education and rehabilitation centre) of Hamm***

*Convention between the Union of Sickness Funds and the Hamm CRRF, concluded pursuant to Article 61 and following of the social insurance code*

The Convention applies to people protected by one of the sickness funds, to people protected by the statutory insurance schemes of countries with which the Grand Duchy of Luxembourg has bi- or multilateral social security agreements and to people insured against the risks of accidents at work and occupational diseases.

The CRRF offers in- or outpatient treatment for protected people requiring ongoing specialist functional re-education and/or rehabilitation, including physiother-



apy, occupational therapy, speech therapy, neuropsychology, re-education equipment and/or treatment.

Admission is by prior medical authorisation following a medical check which is based on a recommendation by the attending doctor and a treatment plan drawn up by the CRRF doctors.

The services provided for protected people are paid by the Union of Sickness Funds which pays claims directly to the service provider. The CRRF levies a charge on protected persons admitted for treatment, with the exception of people covered by accident insurance.

If people are still dependent at the end of a period of re-education and rehabilitation, they may contact dependency insurance which may, following an assessment of the situation, bear the costs of aids and care.

### Dependency insurance

#### *Law of 19 June 1998 introducing dependency insurance*

Since 1 January 1999, all workers and pensioners have automatically paid a special contribution of 1% on all occupational income (wages, pensions, etc.) and all capital income. All these persons, and their family members, are entitled to benefits in the event of dependency, irrespective of their income.

Any person who, as a result of a disease or physical, psychological or mental disability, needs regular assistance from a carer for the essential activities of daily life, is considered to be dependent. The essential activities of daily life include: personal hygiene, nutrition and mobility. Assistance with the essential activities of daily life must be provided for at least 3.5 hours per week and the state of dependency must be likely to last at least six months or be irreversible.

In the case of children, dependency is determined by their additional needs in comparison with a child of the same age in good health.

Dependency insurance finances the aid and care of "dependent" people in the following areas: assistance with the essential activities of daily life, assistance with domestic tasks, support work, counselling, products needed for assistance and care, appliances and housing adaptation. Dependency insurance pays home assistance and care networks and assistance and care establishments directly for the assistance and care services that they provide. These are known as benefits in kind. If people remain at home, some of these benefits in kind – only assistance with the essential activities of daily life and domestic tasks – may be replaced by cash (cash benefits).

## **Occupational rehabilitation**

### Occupational reintegration

#### *Law of 25 July 2002 on incapacity for work and occupational reintegration*

Under this new law, employees who have not been registered disabled but who, as a result of a protracted illness, infirmity or exhaustion are unable to carry on the job in which they were last employed, are eligible for internal or external redeployment. Internal redeployment involves redeployment within the enterprise, possibly to another post or another working system. External redeployment involves redeployment in the labour market. Decisions are made by a mixed committee supervised by the ministry responsible for labour and employment. Employers regularly employing over twenty-five employees are liable to redeploy workers with reduced capacity. In cases where the internal redeployment goes together with a pay reduction, insured persons are entitled to a compensation allowance – paid by the employment fund and representing the difference between the previous and the new pay. When internal redeployment is impossible, workers are automatically registered as jobseekers with the reduced-capacity workers' service of the employment authorities which offers guidance, training, placement, rehabilitation and external redeployment. If, at the end of the statutory period of payment of unemployment benefit, it has not been possible to redeploy workers in the ordinary labour market, they are eligible for a waiting benefit which is paid by the relevant pension insurance fund and whose amount corresponds to the invalidity pension to which the worker in question would be entitled. During payment of the waiting allowance, beneficiaries must remain registered as jobseekers with the reduced-capacity workers' service of the employment authorities.

### Disabled worker status

#### *Amended Law of 12 November 1991 on disabled workers*

#### *Law of 12 February 1999 on the implementation of the national action plan for employment of 1998 (Article IV)*

Disabled worker status may be requested by disabled people registered as jobseekers with the employment authorities, by people working in sheltered workshops, by employees looking for new jobs because their current job is under threat as a result of their disability and by people in receipt of the invalidity pension wishing to return to work in the open market. These people must satisfy the following conditions to be able to submit a request for disabled worker status: they must be aged 15 or over, have a capacity for work reduced by at least 30% as a result of a disease, natural cause or accident, have a physical, mental, sensory, psychological and/or psychosocial disability, and be registered with the disabled workers' service of the employment authorities. If the disablement as-

assessment and resettlement panel decides to award disabled worker status, the director of the employment authorities decides on any measures to support occupational re-integration: contribution to wage costs, training, transport, costs connected with work station adaptation or access to work, incentive or rehabilitation allowance. This panel may offer guidance, training, placement or occupational rehabilitation services. Disabled workers are entitled to six additional days of leave.

### Sheltered workshops

#### *Amended Law of 12 November 1991 on disabled workers*

The term "sheltered workshop" was used in Luxembourg for the first time in the Law of 12 November 1991 on disabled workers. As it was impossible to integrate all disabled people into the normal working environment, sheltered workshops were introduced to provide an outlet after vocational training. These workshops are in most cases managed by private associations. Their internal organisation is generally modelled on the organisation of private enterprises. There are, however, some restrictions of the daily pace of work and auxiliary rehabilitation and treatment services directly related to the target population.

### **Social rehabilitation**

#### Guaranteed minimum income

#### *Amended Law of 29 April 1999 establishing entitlement to a guaranteed minimum income*

In order to be able to claim the guaranteed minimum income, people must be aged 25 and have resided for five years in Luxembourg. The law stresses active measures – especially the integration efforts that beneficiaries of the guaranteed minimum income must make themselves - rather than passive measures. Beneficiaries must therefore take part in an occupational integration activity if they are to be awarded the guaranteed minimum income. Occupational integration activities include: assisted jobseeking and preparation for occupational measures or integration, allocation to works of collective utility, allocation to work experience in enterprise. Only applicants who are unfit, for both the ordinary labour market and the measures set out in the law, and those people who are exempted under a legal provision, are entitled to the supplementary allowance. Exemptions may be awarded to people bringing up children for which they are receiving family allowances, when participation in the above measures is impossible on serious grounds in connection with the child, or for adults caring for a person suffering from a serious infirmity requiring constant attendance by a carer and for people whose state of physical or psychological health is such that participation in the measures set out in the law is temporarily or permanently inadvisable or impossible.

The supplementary allowance is intended to make up the difference between the maximum amounts of the guaranteed minimum income, which are set depending on the composition of the household, and the total income available to the household. Adults who, as a result of illness or infirmity, are not able to earn a living (i.e. by working in the labour market) and who live in the household of their ascendants or brother or sister continue to be considered as single people. For these people, the age criterion is lowered from 25 to 18.

#### **D. Participation in social life**

At present the Grand Duchy of Luxembourg has no law prohibiting discrimination against disabled people. The Law of 19 July 1997 supplementing the Criminal Code by amending the definition of the offence of racism and making revisionism and other acts based on illegal discrimination into offences covers, among others, people with disabilities.

Articles 454 and 455 of Title II of the Criminal Code therefore state: "Article 454. - Any distinction between natural persons on grounds of their origin, colour of skin, gender, ..., state of health, disability, ..., shall be discrimination.

Any distinction between legal persons, groups or communities of people, on grounds of their origin, colour of skin, gender, ..., state of health, disability, ..., shall also be discrimination. Article 455.- Discrimination ... shall be punished ..., when it consists in:

- refusing to supply or transfer possession of goods;
- refusing to supply a service;
- making the supply of goods or services subject to a condition based on one of the grounds set out in Article 454 or performing any other discriminatory act at the time of such supply on the basis of one of the grounds of Article 454;
- indicating in advertising the intention to refuse goods or services or performing a discriminatory act at the time of supply of goods or services on the basis of one of the grounds of Article 454;
- impeding the normal practice of any economic activity;
- refusing to recruit, punish or dismiss a person,
- making an offer of employment subject to a condition based on one of the grounds of Article 454.

Government policy on disabled people tries to improve the opportunities for the social integration of disabled people by promoting an accessible environment for all people of reduced mobility and providing them with full social status. The Law of 29 March 2001 on the accessibility of places open to the public and the formulation of a guide to standards by associations of or for disabled people as well as other practical measures to inform and make people more aware of accessi-

bility are helping to promote the social integration and full participation of people with disabilities. In the case of the social status of the disabled, a draft law on the income situation of disabled people is currently going through the legislative procedure. Under this draft, any disabled person working in a sheltered workshop is entitled to employee status and any disabled person incapable of working is entitled to a replacement income providing them with financial independence.

## **NETHERLANDS**

People with a physical or mental disability are entitled to full and equal participation in society. The policy of the Dutch government is aimed at giving them the opportunity to function independently within society. Within their capacities, disabled people themselves must be enabled to give shape and substance to their lives. Their rights, including rights to equal opportunities and duties, are equal to those of all Dutch citizens.

People with a functional disability should, when and where possible, be able to participate and integrate in society by utilising public services and facilities. 'Special' facilities are required only where this is not possible. Some people with a disability, however, cannot manage without additional help, support or facilities. These people too must be able to rely on adequate care.

### **A. Definition**

Who are perceived as disabled in the Netherlands?

'A person with a disability is someone who is limited in his or her functioning as a result of a physical or mental impairment. Such limitation is of a lasting or permanent nature, which means that people with a disability are threatened in their personal development'.

This is one of the more common definitions of the term 'disabled'. However, there are many more definitions. This partly explains why the number of disabled persons in the Netherlands cannot be accurately given. This also depends on the availability of statistical data. More than 11% of the inhabitants of the Netherlands – 1.6 million – have serious to very serious limitations. Approximately 4% (450,000 to 500,000 people) have very serious limitations. Of these, approximately 100,000 are people with a mental disability. The majority of this group, some 60,000 people, live in an institution for people with a mental disability or in a family replacement home.

## **B. Organisation of the legislation for disabled persons**

In the Netherlands, the field of disability policies is quite complex. Central government's policy for this target group in the areas of accessibility, transport, employment, income position, education, accommodation and culture, for instance, does not fall directly under the Ministry of Health, Welfare and Sport (VWS), but is generally the responsibility of other departments. These general disability policies are aimed at all people with a disability in the Netherlands; these people must be able to function as equal citizens in society. The Ministry of VWS' specific disability policies in the area of care provision are primarily targeted at people with very serious limitations. The Ministry of VWS is involved in disability policies from three different perspectives. At governmental level, the ministry is in charge of coordination.

At this level, the Ministry of VWS cooperates with the four other ministries most involved: Social Affairs and Employment (SZW), Education, Culture and Science (OCW), Transport, Public Works and Water Management (V&W) and Public Housing, Physical Planning and the Environment (VROM) in the Interdepartmental Committee for Coherence and Coordination in disability policies and/or the Chronically ill (ISG).

This committee is a consultative body for the alignment, development and coordination of central government's disability policies in the Netherlands. In addition, the Ministry of VWS is charged with developing and implementing the policy on care facilities for people with a disability. The ministry of VWS is also responsible for welfare policies for people with a disability. This involves developing, implementing and evaluating the policies aimed at social participation of this target group.

To conclude the entire public sector in the Netherlands is involved in disability policies. Within these policies, other ministries besides the Ministry of VWS each have their own field of responsibility to this target group.

In general the organisation of the legislation for disabled persons is organised into two tracks:

- With keywords: equal treatment, non-discrimination, mainstreaming, inclusive policy
- With keywords: support, technology, financial support

Until last year a governmental body was charged to co-ordinate regulations of various ministries.

### **C. Benefits in the various fields of social security**

The majority of the care facilities and services for the disabled are funded through the public health insurance on the *Exceptional Medical Expenses Act* (AWBZ). The AWBZ provides entitlement to expensive, uninsurable and long-term health care. This entitlement to health care is provided by benefits in kind. The AWBZ covers mainly three types of facilities:

#### ***Care facilities***

The care for people with a mental disability involves helping clients who have other problems besides their mental disability, such as psychological problems, epilepsy and people with non-congenital brain damage. Care, support and treatment for these people are given in institutions or wards specifically designed for this purpose. These various institutions can only provide for part of the total demand for care. Sometimes the problems are so complex that no single sector is able to respond specifically to the need.

#### ***Domiciliary care***

Most people with a physical or mental disability live independently or with their parents or carers. In most of these cases, additional care or supervision is necessary. Assistance for recurring or daily care, nursing or domestic help can be applied for from the so-called Domiciliary Care Institutions. The Netherlands has some 142 institutions that provide domiciliary care.

#### ***Technical aids***

Technical aids can remove barriers, enabling disabled people to function as independently as possible. Technical aids are used primarily for self-care, general daily activities, domestic activities, work, leisure activities, mobility, transport and communication. The shape and design of many daily appliances influences how technical aids are used. In many cases a properly designed general product for the disabled can be a good and useful alternative to more costly technical aids.

For parents who wish to take care of a disabled child at home, the *TOG* regulates additional contributions (apart from child benefit) towards the upkeep of a disabled child at home. The conditions for entitlement of this benefit are that the child is almost constantly in need of minding and care and that the child's disability is the result of one or more physical or mental disorders. The child must be at least 3 years and no more than 17 years of age.

From the age of 18, a child can claim a benefit under the *Disablement Assistance Act for Handicapped Young Persons* (Wajong). This Act makes provision for a minimum benefit for young handicapped people. The persons concerned are resi-

dents of the Netherlands who upon reaching their 17<sup>th</sup> birthday are incapacitated for work, or have become disabled since that date and who were students for at least a period of six months in the year immediately prior to that date. The *Wajong* benefit depends on the degree of disability and the benefit basis. The basic rate for this benefit is the minimum (youth) wage.

Employees or self-employed who became disabled may be entitled to a benefit under the *Disablement Benefits Act* (WAO) or the *Self-employed Persons Disablement Benefits Act* (WAZ). The WAO entitles disabled employees under the age of 65 to a benefit if they are still at least 15% unfit for accepted employment after 52 weeks of disability. The benefit consists of two phases; a period during which there can be entitlement to a wage-related benefit, and a period during which there can be entitlement to a follow-up benefit. The first one is related to the daily wage, the duration depends on the employee's age on the date of commencement of the benefit, the second one is related to both his daily wage and the minimum wage and the entitlement can endure until the age of 65. The WAZ entitles disabled self-employed persons under the age of 65 to a benefit. The amount of benefit depends on the degree of invalidity and the amount of lost earnings, but can be no higher than 70% of the minimum wage.

For disabled persons who need help at the (re-)entry into the labour market, the *Disability Reintegration Act* (REA) contains various measures. The aim of the REA is on the one hand to stimulate employers to prevent long term work incapacity and on the other hand to retain or hire persons receiving full or partial disability benefits. The measures vary from adjustments to workstations to wage supplements.

Finally, under the *Act on facilities for the disabled* the disabled may apply for various adaptations in their houses and means of transportation, and for wheelchairs.

### ***Developments in care for the disabled***

Care for the disabled aims primarily at strengthening disabled people's independence and autonomy. Important preconditions are that people are given the opportunity to make their own choices and are given access to accommodation that they perceive as contributing to their own living environment.

Most facilities within 'Care for the Disabled' (AWBZ) provide collective care. The specific demand for care by individual disabled clients is still not sufficiently taken as the basis for care. Far too often, a disabled person is still considered to be a patient who needs care and protection within the walls of an institution, rather than a citizen who has an individual need for assistance. Hence care and assistance must be better aligned to the client's demands, and are to be provided through small-scale accommodation schemes. This means living in an ordinary street and neighbourhood, just like everyone else. The Ministry of VWS is promoting the transition from large-scale care based on supply to care and sup-



port based on demand. One way this is being done is by encouraging small-scale thinking in renovations, reconstruction and new construction and by making legislation more flexible. The first steps in this process have already been taken, which means that a mixed system of both large and small-scale care is being created in the Netherlands.

### ***Client -linked budget***

A relatively new instrument in the care sector for the disabled is the so-called client-linked budget. This incorporates the principles of demand-driven care, freedom of choice, custom-made care and the promotion of autonomy. This subsidy scheme by the Healthcare Insurance Board for the care and nursing sectors (domiciliary care) and care for people with a mental disability came into effect on 1 January 1996. This scheme enables people with a mental disability who have a referral for an AWBZ institution to apply for such a budget. With this budget, they can purchase the required care and supervision themselves, or have others purchase it on their behalf. This means that they can choose who provides care and at what time. This offers people more freedom and flexibility in arranging their daily lives. An annual fixed subsidy is earmarked for client-linked budgets. In 2002, the amount set aside for people with a mental disability was € 164 million. These budgets constitute a demand-driven supplement to the existing schemes for the provision of care, which is usually supply-driven.

## **D. Participation in social life**

### ***Participation in society***

Promoting participation of the disabled in society requires the concerted efforts of many parties. It is the joint responsibility of the public sector (municipalities, provinces and central government) and private sector initiatives (organisations of the disabled, volunteers, support institutions, national organisations and executive bodies). The task of the public sector is to create the right conditions for the required participation. The private sector initiatives are responsible for implementation. This division of responsibilities is established in the Welfare Act. Under this act, the Ministry of VWS structurally subsidises a number of organisations of the disabled. The emphasis is on organisations that strengthen the position of the disabled in the broad field of participation and integration in society.

### ***Consultative Body for Disability Policies (GOG)***

The Consultative Body for Disability Policies (GOG) is the Ministry of VWS' official interlocutor. The GOG consists of the umbrella organisations of care providers, service providers and institutions that focus on strengthening the social position of the disabled.

### ***Projects, pilots and research***

The emphasis in the Ministry of VWS' subsidy policy in recent years has been on short-term projects, pilots and research (PEO), aimed at removing barriers and specific bottlenecks. Every four years, the spearheads of the PEO approach are laid down in the Welfare Policy Document presented to the Dutch Parliament. Welfare policies for people with a disability is incorporated in this Policy Document in themes such as participation and accessibility, the prevention of social exclusion, the promotion of sport and quality of life. Care Research in the Netherlands (Zorg Onderzoek Nederland – ZON/NW) plays an important role in research. ZON/NW stimulates research and innovation in health care and promotes the use of the relevant findings in practice. The Netherlands Institution for Care and Welfare (NIZW) plays a similar role in the field of employment promotion. The NIZW develops methods that enable the sector to respond to new client demands and social developments. Both institutes are funded by central government.

### ***Future developments***

The lower house of parliament has accepted a bill on equal treatment in the fields of vocational education and training, labour and public transport. It's on the agenda of the upper house. Next year the senate will discuss this proposal. Furthermore a bill to change the penal code to forbid discrimination on handicap is under discussion in the lower house of the parliament.

Within a number of rules and laws that guarantee support, technical aids etc. a change is made to raise awareness that each governmental measure should take into account the differences between individuals, especially for disabled persons. The Dutch government enhances the "designed for all" strategy. This means that products should be designed in a way that disabled and non-disabled can operate them on an equal basis.

## **NORWAY**

### **A. Definition**

Disability is a complex term, and a further definition is required: The concept of impairment refers to the loss of, injury to or deviation from the normal psychological, physiological or biological functions of the body. Disabling factors refer to the gap or discrepancy between the ability of the individual and the demands of society – with regards to those functional abilities that are vital in order to establish and maintain independence and a social life. When the concept of disability is applied to persons, it refers to people whose practical living is limited due to the

gap or discrepancy between their impairment and the demands of society/environment".

According to the National Insurance Act, a disabled person is defined in relation to his/her work ability; A person can apply for disability benefits/ pension when his/her working capacity is reduced by at least 50 per cent due to illness, injury or defect.

## **B. Organisation of the legislation for disabled persons**

### **1) Legislation for disabled persons are mainly organised in the National Insurance Act:**

- disability benefits
- rehabilitation benefits
- technical aid

### **2) Social services act**

Municipal health service act:

However, these acts are vague. They grant the right to required services of assistance on a decent level, but leave room for great variation with regard to the extent and quality of the services offered.

## **C. Benefits in the various fields of social security**

### **Entitled group of persons/Conditions of entitlement (National Insurance Act)**

An insured person between 18 and 67, whose working capacity is permanently reduced by at least 50 per cent due to illness, injury or defect, is entitled to a disability pension if he/she has been insured with entitlement to pension benefits for at least three years up to the contingency. These benefits are payable as long as the beneficiary is still insured, or if he/she is entitled to a supplementary pension, in which case a basic pension, corresponding to the number of years pension points are credited for, is also granted. Furthermore, the condition of being insured concerning the payment of basic pension is waived if the person has been a resident in the Realm for at least 20 years.

### **Benefits in cash**

Disability benefits comprise basic benefit, attendance benefit and disability pension.

An insured person with a disability is entitled to basic benefit and attendance benefit.

A basic benefit is granted if the disability involves significant extra expenses. There are six basic benefit rates, which are adjusted each year by Parliament. Annual rates in 2003: NOK 6 540, NOK 9 996, NOK 13 140, NOK 19 332, NOK 26 208 and NOK 32 748.

An attendance benefit is granted if the disabled person needs special attention or nursing. There are four attendance benefit rates, which are adjusted by Parliament. Annual rates in 2003: NOK 10 896, NOK 11 724, NOK 22 448, NOK 46 896 and NOK 70 334.

The three highest rates are only granted to persons under the age of 18.

The basic benefit and the attendance benefit are reduced accordingly if granted in addition to a National Insurance pension that is reduced due to reduced insurance periods.

The disability pension consists of a basic pension and a supplementary pension and/or special supplement (as for old-age pensions).

Future insurance periods and future pension points up to and including the year of the persons 66th birthday are taken into account. Limitations apply in the case of previous periods of some substance abroad. Future pension points are assessed on the basis of income before the disability occurred. Otherwise the basic pension and the supplementary pension are calculated as for old-age pensions.

Insured persons born disabled or having become disabled before reaching the age of 26, are credited future pension points by a minimum of 3.3 (corresponding to an earned income of 4.3 B.a.) if the beneficiary was born after 1940. However, the requirements of sickness and documentation are stricter than the requirements used for the general determination of disability.

Insured persons born in the years 1931-1940 who were born disabled or became disabled before reaching the age of 26, are granted a guaranteed minimum supplementary pension on the basis of a final pension point of 3.3.

In the case of partial disability, the pension is reduced proportionally.

A supplement of up to 50 per cent of the pensioner's basic pension is on certain conditions granted for a supported spouse. A supplement of up to 40 per cent of the B.a. is on certain conditions granted for each supported child under the age of 18. These supplements are income-tested. A guaranteed supplement is granted with regard to supplements granted before the introduction of income testing.

For persons that have been granted pension before 1992 with future earning of pension points, the already calculated pension points from the year 1992 onwards, will be recalculated according to the new provisions of obtaining points. A guaranteed supplement is granted in the case of disability pensions granted prior to 1992, in order to prevent a reduction of the nominal amount of the pension.

This supplement will gradually be reduced as a result of future increases of the B.a.

Temporary disability benefit may be granted before a final decision is made on granting a disability pension if it is probable that such a pension will be granted.

### ***Time limited disability benefit***

In a Green Paper (Odelstingsproposisjon no. 102, 2001-2002), the government proposes to divide the disability pension into a permanent disability pension and a time limited disability benefit. The goal is to reduce the number of new disability pensioners and prevent permanent disability. The permanent disability pension will be granted those who after having undergone appropriate treatment still are without prospect of going back to work in the future. The time limited disability benefit will be granted those who have the prospect of going back to work.

The time limited benefit will be granted for a period from one to four years. After this period the time limited disability benefit will be reconsidered and may be prolonged for a new period up to four years. The benefit will be calculated as the rehabilitation benefits and benefits during vocational rehabilitation and will consist of 60% of the estimated pension income. The lowest annual benefit will be 1.8 of the basic amount. No supplement for spouse will be granted. Supplement for children will be given as a fixed sum per child per day. Persons receiving time limited disability benefit will not be allowed to earn the "free income" beside the benefit.

### ***Benefits in kind:***

Technical aids

## **D. Participation in social life**

### ***Anti - Discrimination***

Two important political documents have recently discussed these issues:

The White Paper on people with disabilities 1998-2001- Participation and equality, and From User to Citizen - NOU 2001-22.

The following sums up some of the discussions in these documents.

The current Norwegian legislation does not sufficiently safeguard the needs of people with disabilities. Anti-Discrimination legislation should prohibit both direct and indirect discrimination against disabled people with equality as its objective.

For these reasons the Norwegian Authorities are preparing an anti-discrimination Act.

The aim of this Act is to ensure that we achieve a society that is equally accessible to the disabled and the non-disabled, and in this way to minimise the need

for special arrangements for the disabled. The Act would be mandatory in order to strengthen the effect of currently existing legislation. Especially in cases where acts are unclear or inaccurate with regard to the rights of the disabled. The Act would apply both to the private and to the public sector.

The Authorities propose that the following elements must be central in the formulation of such an Act: The Act would need to stipulate the use of positive special treatment in some areas. It should require that standards are set. It should also contain a statutory requirement for all public reports to clarify the consequences for disabled people as well as a requirement that in cases involving public funds, grants would be made conditional on adaptation for the disabled. The Act should grant individuals the right to lodge a complaint in cases where they feel themselves to have been discriminated against, and the Act should provide the basis for the filing of lawsuits. Shared burden of proof should be introduced. The Act shall contain provisions on sanctions.

The NOU will be followed up by a White Paper to the parliament in spring 2003. This White Paper will contain political aims, strategies and efforts in favour of people with reduced working ability. There will be certain regard on efforts concerning higher education and work, increased accessibility and increased quality of public services.

### ***Inclusive Labour Market***

In the autumn 2001, just before the parliamentary elections, the Government and the social partners made an agreement on common effort to create a more inclusive labour market (The Intent Agreement). The agreement regards the period from October 2001 to 31.12. 2005, and includes three main goals for that period:

- Reduce sickness absence by 20%
- Increase labour market participation among disabled and handicapped people
- Increase labour market participation among the older workers (increase the average retirement age)

The measures to reach these goals are mainly based on the following principals and proposals:

- Earlier intervention and better follow-up methods with regard to people drawing sickness benefit
- The measures shall be more related to the work place
- Use of work-ability index to measure what the employee is able to do despite his/her sickness
- The social partners have the main responsibility to reach the goals of the agreement, whereas the government, through the National Insurance Serv-

ice, is playing a supportive role by providing (economic) incentives to those employers that make serious efforts to cope with the problems.

- There will be no change in the sickness benefit scheme

Special schemes and measures according to the agreement are:

- More purchasing of health care services, including rehabilitation services
- Wage subsidies to employers who employ disabled people
- Special scheme in national insurance for sickness absence related to pregnancy
- Reduced employer's contribution for employees over the age of 62
- Special subsidy for adaptation of the work place to disabled people
- In addition there are special schemes for employers who make special agreements with the National Insurance Service:
  - Easier access to activation during sickness leave
  - Better guidance by the national insurance authorities
  - Special reimbursement for occupational health care services
  - Extended possibilities for self-reported sickness absence

The effects of the Intent Agreement will be evaluated in 2003, with a final evaluation at the end of the period.

## **AUSTRIA**

### **A. Definition**

In Austria, legislation for disabled persons is a mainstreaming issue. Numerous federal and *Land* laws contain statutory provisions that have an impact on disabled people. Since these laws have different objectives, they contain numerous different definitions of disability. The public placement service policy, for example, is concerned with providing particular support to people who are having particular difficulty finding a job because of their disability. Other institutions, on the other hand, are trying to compensate for disadvantages affecting a disabled person's whole life by various measures such as financial assistance, the payment of pensions (from the statutory pension and accident insurance scheme), or the payment of increased family benefits. To this extent it also makes sense to have different definitions of disability. There are therefore no plans to create a standard definition of "disabled persons" which could then also have legal consequences.

The benefits under the various laws, e.g. the Disabled Persons Employment Act and the Federal Long-Term Care Benefit Act, are also based on the "purpose principle", i.e. no distinction is made according to the nature and cause of the disability or the age at which the disability occurs.

In the statutory accident insurance scheme, on the other hand, the time, location and cause of the accident have to relate to the employment on which the insurance is based.

## **B. Organisation of the legislation for disabled persons**

The Austrian Constitution does not contain a separate rule on responsibilities for assistance to disabled persons or rehabilitation. Under Article 10 of the Federal Constitution Act (B-VG), some of these areas are explicitly assigned to the Federal Government, e.g. social insurance or the majority of employment legislation and healthcare. The Federal Government's administrative responsibility for the *Bundespflegegeld* (long-term care benefit) was established by a separate constitutional clause. Under Article 12 B-VG, responsibility for framework legislation in other areas lies with the Federal Government, and responsibility for implementing legislation and enforcement lies with the *Länder* (e.g. supplementary welfare). Where this is not the case, however, administrative responsibility for assistance to disabled persons and rehabilitation remains with the *Länder* under the blanket clause of Article 15(1) B-VG. This division of responsibilities has proved to be successful and justified in practice, since it enables disabled people's problems to be tackled where they arise.

The 1990 Federal Disabled Persons Act amalgamated all the Federal Government's regulations on disablement into one comprehensive law for disabled people, and it enshrined arrangements for the coordination of rehabilitation benefits in the law. The rehabilitation agencies have a duty to coordinate the measures they take. Agreements are also made at regional level for this purpose. At federal level the Federal Ministry of Social Security has administrative responsibility for the coordination of matters relating to disabled people.

The main players involved in vocational integration are the public placement service, the *Bundessozialamt* (Federal Office of Social Affairs) and the *Länder*.

In conformity with the statutory provisions and the regional agreements, all the public placement service's active policy measures and facilities aimed at finding jobs are also available to disabled people. Or rather, the public placement service plans these measures in such a way that people with disabilities can also have access to these benefits.

By agreement with the public placement service, with the *Land* in question and with the social insurance agencies, with the involvement of the education authorities, both sides of industry, disabled people's organisations and voluntary agencies, the Federal Office of Social Affairs develops all the additional public



placement policy measures that are needed if disabled people are to find or keep a job. It also finances these benefits in conformity with legal obligations and the regional agreements.

Under the respective *Land* laws, the *Länder* finance vocational integration services and, within the scope of these legal obligations and regional agreements, they enable jobs to be kept open for people with disabilities.

The insurer responsible in each case also complies with its legal obligations to provide benefits to enable a job to be obtained or kept.

The rehabilitation agencies cooperate on an equal footing and in partnership. Nevertheless, a control function has to be established for the initiation and coordination of public placement policy activities for people with disabilities. This function is performed by the Federal Office of Social Affairs, which acts as the focal point for vocational rehabilitation, integration and the provision of comprehensive advice and assistance to people with disabilities.

The ÖAR (Austrian Rehabilitation Working Group), which is the umbrella association for disabled people's organisations, is also consulted on all major disabled persons policy and long-term care provision issues. The ÖAR is represented on all major Federal Ministry of Social Security bodies, namely on the *Bundesbehindertenbeirat* (Federal Advisory Board on Disabled Persons), which has an advisory role in all fundamental issues relating to disabled persons policy; on the *Arbeitskreis für Pflegevorsorge* (Long-Term Care Provision Working Group), which is tasked with delivering recommendations and proposals for the ongoing development of long-term care provision and with drawing up an annual report on long-term care provision; and on the *Ausgleichstaxfondsbeirat* (Compensation Levy Fund Advisory Board), which is concerned with vocational rehabilitation issues.

People in need of constant care and assistance for over 50 hours a month are entitled to long-term care benefit if this situation is anticipated to last for at least six months. This is paid on a scale depending on the individual need for care, either by the Federal Government (to pensioners and recipients of an accident insurance pension from the statutory social insurance scheme, Federal civil service pension or life annuities) or by the *Länder* (to the employed, their family members, recipients of supplementary welfare benefits, and people who have retired from public service with the *Land* and local government units). In addition, care benefits in kind are available from outpatient, partial inpatient or full inpatient care services if needed.

Under the statutory pension insurance scheme, non-manual workers and qualified manual workers receive a *Berufsunfähigkeitspension* (pension based on incapacity for habitual occupation) and manual workers receive an *Erwerbsunfähigkeitspension* (pension based on incapacity for work) if their capacity for work has been restricted by at least 50%. On the other hand, an accident insurance pension from the statutory accident insurance scheme is paid where there

is permanent incapacity for work of at least 20%. A person can receive an accident insurance pension and an invalidity pension at the same time.

In the case of family benefits, increased child benefit, currently € 131 per month, is paid for severely disabled children (degree of disability at least 50% or permanent incapacity for work) in addition to the general child benefit. If the incapacity for work occurred before the age of 21 or during vocational training, but no later than the age of 27, child benefit and increased child benefit are paid indefinitely.

### **C. Benefits in the various fields of social security**

The Disabled Persons Employment Act (BEinstG) is the main vehicle by which the Austrian legal system provides assistance with the vocational integration of people with disabilities. The aim of the Act is sustainably to ensure that jobs are created and maintained for people with disabilities through a series of assistance and protection measures. The Disabled Persons Employment Act is based essentially on the three pillars of: employment obligation (employment of at least one protected disabled person for every 25 employees, otherwise payment of a compensation levy per month and vacant obligatory post); financial incentives to promote integration (e.g. grants for employment costs and workplace adaptation); and protective legislation (including protection against dismissal).

People entitled to claim are essentially protected disabled people. To be accorded protected status there must be a degree of disability of at least 50% and the capacity to be employed at least in a sheltered workplace. The protected person must also be a citizen of a Contracting State of the Agreement on the European Economic Area or must have refugee status and must be available for work, at least theoretically. Protected status gives access to assistance from the compensation levy fund under the heading of vocational rehabilitation.

The main categories of vocational rehabilitation assistance and measures involve integration measures for disabled young people, assistance for employees with disabilities and assistance for employers employing disabled people.

In addition to these categories of assistance, which are implemented by the Federal Office of Social Affairs, vocational integration assistance is provided by the public placement service and the *Länder*.

The *Länder* and the social insurance agencies are mainly responsible for social rehabilitation. Assistance from the compensation levy fund is, however, also available essentially to protected disabled people under the heading of social rehabilitation.

This includes grants to enable living space to be adapted for a disabled person, grants to buy a car and to obtain a driving licence, and grants for fares. Assistance is also provided for special courses for blind people and people with severe visual impairment and for the acquisition of a guide dog. Then there is assistance

for communication aids and electronic aids, and grants for the purchase and repair of orthopaedic aids and appliances and other medical aids and appliances.

Under the statutory social insurance scheme, rehabilitation measures are mainly available to insured people with physical, mental or psychological disabilities. These measures are introduced as soon as the event insured against, i.e. a restricted capacity for work, arises or is impending. The purpose of this benefit is to maintain the insured's capacity for work for as long as possible and to avoid the premature payment of pensions. Rehabilitation measures that can be provided are described below.

The medical measures include all diagnostic and therapeutic measures to enable the person to maintain and regain the capacity for occupational practice; accommodation in rehabilitation centres; medical assistance, medication and medical aids and appliances. The vocational measures aim to integrate the disabled person into their former occupation or a new occupation. The social measures include the grant of loans for accommodation adapted to the needs of disabled people or for a vehicle.

The measures cannot be initiated without the disabled person's consent. For the duration of medical rehabilitation the pension insurance scheme has to pay *Übergangsgeld* (transitional benefit) amounting to 60% of average earnings.

#### **D. Participation in social life**

In July 1997 the lower house of the Austrian Parliament (*Nationalrat*) adopted an amendment to Article 7(1) of the Federal Constitution Act with all-party agreement. The following sentences were added to the general principle of equality:

"No one may be discriminated against on account of their disability. The Republic (Federal Government, *Länder* and local government units) acknowledges that it will ensure the equal treatment of disabled and non-disabled people in all areas of daily life."

The first sentence contains an explicit ban on discrimination against disabled people. In future, therefore, when assessing whether a particular instance of discrimination is justified in practice, the Austrian Constitutional Court, in the course of its ruling on appeals, will not only have to consider the principle of equality but will also have to give special consideration to the ban on discrimination on the basis of disability. The purpose of the basic policy enshrined in the second sentence of the article is to ensure that all local authorities have a duty to do more to assist and support disabled people and to work towards their equal treatment in all areas of daily life. This provision is not enforceable through legal action, however.

As a result of this constitutional rule, some laws have been amended to eliminate provisions that discriminate against disabled people.

Disability affects not only employment but all areas of life. Disabled policy nowadays therefore has to be geared to the community as a whole and has to be integrated into general policy plans and measures (mainstreaming). Disabled policy must therefore be based on a holistic view of the person, with equal consideration for that person's physical, mental, psychological, social and cultural needs.

The Austrian Government took account of this with the "Disability Concept" it adopted in 1992. The Disability Concept is the cornerstone of the Austrian Government's disabled policy and incorporates the major aims for the individual areas of life such as childhood, schooling, vocational training, work, health, having a house built, accommodation, transport, leisure and long-term care provision. In the areas that are primarily the responsibility of the *Länder*, the Concept objectives are to be seen as the Federal Government's request to the *Länder* to achieve these aims.

A central principle of the Disability Concept is the need for integration, which means having to ensure that disabled people can participate as fully as possible in social life. The measures initiated in Austria to ensure integration into all areas of life are being stepped up partly because 2003 is the European Year of People with Disabilities.

With the employment initiative it has launched for people with special needs, known as the *Behindertenmilliarde*, the Federal Government has stepped up its efforts to integrate disabled people into the world of work. The various measures are intended to help 7 000-8 000 people a year.

The following key areas are being specifically targeted:

- young people with disabilities

The transition from school to the world of work is often very difficult to cope with, particularly for young people with disabilities, since this group of people lacks training and employment opportunities. An integration package tailor-made for these young people covers measures such as *Integrationsbeihilfen* (integration allowances), where employment costs are paid for a limited period as an incentive to employ young people with disabilities, maturation and training projects, support for integration into the world of work and for training courses, as well as study and apprenticeship allowances.

- older people with disabilities

To prevent the loss of a job, existing measures are being supplemented and reinforced by integration allowances and employment subsidies to assist internal and external in-service training.

- accompanying measures

Many enterprises are not used to dealing with disabled people. The *Unternehmerservice* (employers' service) aims to help find the most suitable jobs

for disabled people by means of organisational and technical measures. The guidance covers, for example, making workplaces suitable for disabled people, identifying individual employment opportunities, coping with disabilities, and information on assistance available and on disability legislation relevant to enterprises. Assistance is also available for structural fittings and technical equipment to make businesses and workplaces disabled-friendly. In this context a campaign has already been launched to promote a "normal picture" of disabled people in the business community.

The planned *Behindertenmilliarde* employment initiative measures for disabled people are the responsibility of the Federal Office of Social Affairs. All the relevant partners at *Land* level are involved in control and implementation in the regions, and existing coordination structures are being used for this purpose.

Austria is taking the opportunity presented by the 2003 European Year of People with Disabilities (EYPD) to launch an appropriate public relations campaign to create a different picture of people with disabilities amongst the public. Austria is also focusing on the following areas during the EYPD:

- production of a Federal Government report on the position of disabled people in Austria,
- Federal Government employment initiative for people with disabilities,
- freedom from barriers in the broadest sense,
- ten years since the reform of long-term care provision.

The European Commission has granted Austria the sum of € 300 000 in sponsorship for projects that conform to the European Year objectives. Austria has doubled this amount. A total of 21 projects are therefore being sponsored to mark the European Year. A list of these projects, including a brief description of what each project involves, can be found on the website [www.andersgleich.at](http://www.andersgleich.at).

## PORTUGAL

### A. Definition

In Portugal, the general definition of the term "disability" is set out in the Framework Law on prevention and rehabilitation of disabled persons (Law 9/89 of 2 May 1989). Under this law, people who, as a result of a congenital or acquired loss or abnormality of psychological, intellectual, physiological or anatomical structure or function, are in a disadvantaged situation as regards the performance of an activity considered normal taking account of age, gender and prevailing social and cultural factors, are considered to be disabled.

For social security purposes, the legal provisions regulating disabled people's eligibility for benefits have used this definition. Entitlement to benefits is not shaped by the various forms of disability; it is guaranteed when there is a proven situation of disability in keeping with the above definition.

### B. Organisation of the legislation for disabled persons

In general terms, there are three main areas in Portugal in which there are measures for disabled people: social security, rehabilitation and integration and employment and vocational training.

In social security, these measures chiefly take the form of the award of cash benefits under the sub-systems of family protection and social welfare (maternity protection). There are also measures for disabled people in other fields of social policy: education, sport, transport and taxation.

Rehabilitation and integration are across-the-board measures in the various branches of social protection. The National Secretariat for the Rehabilitation and Integration of Disabled Persons<sup>8</sup> is the institution responsible for coordinating, developing and implementing national policy on prevention, rehabilitation, integration and inclusion of disabled people.

The Employment and Vocational Training Institute<sup>9</sup> is responsible for implementing most active employment and vocational training measures. There is no single legal code; legislation is spread between a number of laws in each of these fields.

These sectors cooperate with one another and adopt social policies leading in practice to the implementation of common regulatory instruments.

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<sup>8</sup> Department of the Ministry of Social Security and Labour.

<sup>9</sup> Department of the Ministry of Social Security and Labour.

## **C. Benefits in the various fields of social security**

In the case of social security, special disability protection takes the form largely of the award of benefits, especially as regards compensation for family burdens, protection of maternity and protection of dependency<sup>10</sup>.

Benefits in kind are also available within social welfare, but are not guaranteed as an objective right.

Adult disabled persons who have worked are entitled to invalidity protection under the general scheme. The non-contributory scheme also includes coverage of invalidity for people unable to work who are not actually covered by a social protection scheme<sup>11</sup>.

In practice, however, account is not taken of the situation of disability, but rather the possibility of a permanent incapacity for work.

### **1) Family benefits for disabled descendants**

The award of benefits depends on the contributions registered in the insured person's name. People covered by the non-contributory social security scheme are also eligible for these benefits, however, if they satisfy the required means conditions. The new framework law on social security, currently being implemented, introduces a sub-system of family protection as part of the public social security system, which covers family burdens, dependency and disability. All residents are eligible and the award of benefits is not subject to insurance conditions.

Family allowances for disabled descendants are listed below together with criteria and amounts:

- The *family allowance premium for disabled infants and children* offsets the increased family outlay resulting from disabilities in children aged under 24 who need special educational assistance or treatment or who are attending specialist rehabilitation centres. The amount of the premium differs for different age groups: up to 14 - €49.81; 14 to 18 - €72.55; and 18 to 24 - €97.12.
- The *special education allowance* varies in amount, is paid depending on family income, and is intended to offset family outlay to cover the costs of children who need to attend a profit-making special education centre or special educational support provided by a profit-making specialist body.
- The *monthly life allowance*, which is intended to offset the costs connected with disabled descendants aged over 24 who cannot work as a result of their

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<sup>10</sup> For further details, reference should be made to the MISSOC Tables.

<sup>11</sup> The non-contributory scheme is intended to protect people in special economic or social circumstances who are not covered by the general scheme or other social protection schemes.

disability or cannot provide for their own needs. The flat-rate amount of this benefit is currently €143.80.

An *extraordinary solidarity supplement* increases the monthly life allowance by an amount of €13.17 for beneficiaries aged under 70 and €26.34 for those aged over 70.

### **1. Maternity benefits**

The following benefits, provided under the maternity protection scheme, are intended to offset the loss of income of working parents caring for disabled descendants:

- *Sick and disabled minors attendance allowance*: set at 65% of the average wage, this allowance is paid to parents having to care for children aged under 10 or for disabled children irrespective of their age. The allowance is payable for a maximum of 30 days of absence from work per calendar year and per child. In the case of hospitalisation, the father or mother may take leave from work for the entire period of hospitalisation. Under the law, the child must live in the same household as the worker. The amount of this allowance is the same as for sickness benefit<sup>12</sup>.
- *Attendance allowance for children who are severely disabled or suffering from a chronic illness*: paid to the father or mother for a period of six months, which may be extended to four years, to enable them to attend to children who are severely disabled or suffering from a chronic illness. The allowance can be claimed for children aged up to 12 when the child lives in the same household as the worker. The amount of this allowance is the same as for sickness benefit.

The payment periods of the above benefits are deemed equivalent to contribution periods and are taken into account when calculating old-age pensions in particular.

### **3. Dependency benefits<sup>13</sup>**

- *Attendance allowance*: of a flat rate of €69.13, this allowance is paid to children entitled to the family allowance premium or to the monthly life allowance and who, because of their disability, need assistance from a carer with the activities of daily life. This allowance cannot be combined with the special education allowance.

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<sup>12</sup> The amount of sickness benefit is 65% of the reference wage defined by  $R/180$ , where  $R$  = total wages recorded in the six months prior to the second month preceding the onset of the incapacity.

<sup>13</sup> Dependency protection is part of the family protection sub-system introduced by the framework law which is currently being enacted.



- *Dependency supplement*: this is an allowance which is not specifically for the disabled. It is paid to people in receipt of invalidity, old-age and survivors' pensions who, because of their degree of congenital or acquired dependency, need the help of a carer for the activities of daily life. The amount is index-linked to the social pension of the non-contributory scheme and covers two levels of incapacity. Level 1 receives 50% of the social pension (45% for non-contributory scheme pensioners) and level 2 receives 90% of the social pension (85% for non-contributory scheme pensioners). The amount of the social pension in 2003 is €143.80.

#### **4. Social welfare benefits in kind**

Under the solidarity and social security system, benefits in kind, especially those intended to support disabled people, come under social welfare. Support of this kind in practice enables people to use a network of equipment and services and provides the resources that they need to do so. For instance: permanent care homes; care homes for people with permanent or temporary disabilities aged over 16; day centres; temporary foster homes for disabled infants and children aged 6 to 16.

Attendance of an establishment depends, among other conditions, on the nature and extent of the disability.

Financing is paid directly by the state to the host establishment, following the conclusion of an individual agreement. Beneficiaries pay an amount towards costs calculated on the basis of their family income.

#### **5. Health care**

As regards the health care provided by the national health service<sup>14</sup>, people in receipt of the monthly life allowance are exempted, under current legislation, from the payment of own contributions, in particular for medical consultations and diagnostic tests.

### **D. Participation in social life**

In Portugal, the principle of non-discrimination is enshrined in the Constitution of the Portuguese Republic, Article 13 of which states that all citizens are equal and have the same social dignity under the law. In practice, as regards disabled people, Article 71 of the Basic Law strengthens these rights and obliges the state to implement a national policy of prevention, treatment, rehabilitation and integration and to draw up a campaign to make society more aware of its duties of respect and solidarity.

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<sup>14</sup> Department of the Ministry of Health.

In accordance with this constitutional rule, discrimination is completely prohibited in social security. The main principles underpinning the philosophy of the system include equal treatment which prohibits any form of discrimination, especially in connection with a disability.

In order to promote the employment of disabled people, employers recruiting disabled people are entitled, under current legislation, to a reduction of their social security contributions. Under the law, employers who hire disabled workers to work in their enterprises under permanent contracts are entitled to a 50% reduction of their social security contributions.

For this purpose, people with a capacity for work of less than 80% of the ordinary capacity of a non-disabled worker in the same occupation are defined as disabled workers.

The largest number of measures for the social and occupational integration of disabled people are nevertheless to be found in employment legislation, for instance:

### **1. Vocational training**

A number of vocational training programmes have been designed to provide disabled people with the qualifications that they need to find and stay in a job.

### **2. Labour market integration**

- *Recruitment aid*: under the law, employers creating jobs for or recruiting disabled people are eligible for financial support.
- *Compensation allowance*: is intended to reimburse employers for any costs connected with the adaptation problems of disabled workers over and above the costs connected with workers in the same occupational category;
- *Work station adaptation allowance*: is intended to reimburse employers for any costs incurred in adapting working tools to the functional abilities of disabled persons;
- *Architectural obstacles removal allowance*: paid to employers to reimburse them for any costs connected with the removal of architectural barriers that impede disabled workers' access to the workplace or make such access problematic;
- *Integration premium*: awarded to employers recruiting disabled people under permanent contracts.
- *Own-job creation*: disabled people who are finding it difficult to find jobs in the traditional labour market are eligible for technical and financial assistance

in order to create their own jobs, through free loans and non-repayable benefits.

- *Sheltered employment*: disabled people with an average capacity for work of 1/3 or more of the capacity of a non-disabled worker in the same occupation are eligible for vocational retraining to help them to move to a normal job. This scheme covers disabled people satisfying all the following conditions: they must be aged between 16 and 65, have completed medical rehabilitation, be registered with the relevant departments of the Ministry of Social Security and Labour, have sufficient independence for the activities of daily life and possess the capacity needed to interpret and carry out instructions in relation to the tasks to be performed.

It is compulsory for workers under the sheltered employment scheme to be affiliated to the general social security scheme.

Since 2001, there has been a system of job quotas for disabled people with an incapacity of 60% or more in central and local government departments and bodies and in some public institutions.

## SWITZERLAND

### A. Definition

#### *At Federal level*

The term "disability" is not defined in current Federal law. The Federal Constitution (<http://www.bk.admin.ch/ch/f/rs/1/101.fr.pdf>) nevertheless contains an article under which particular protection is guaranteed for disabled people (non-discrimination clause and mandate to take legal action to ensure equality; Article 8(2) and (4)). On the basis of this provision, Parliament adopted, on 13 December 2002, the Federal law on the elimination of inequalities in respect of disabled people (LHand) (<http://www.bk.admin.ch/ch/f/ff/2002/7640.pdf>). This law has not yet come into force. Under this law, disabled people are defined as "any person whose *bodily, mental or psychological impairment, presumed permanent*, prevents them from performing the activities of daily life, from entering into social contact, from moving, from attending education and further training and from performing a job, or impedes their performance of such activities" (Article 2(1)). This definition has less to do with the cause of the disability than with its consequences on people's interaction with their environment. It covers such persons at all ages of life. It helps, in this way, to improve the standard conditions of daily life and the social environment, which may of course benefit a population

group broader than disabled people alone. All forms of disability (depending on their cause, origin and the person's age) are covered.

Social insurance law does not define disability, but defines the more restricted concept of invalidity. This concept is defined, for all the branches of social insurance concerned, in the Federal law on the general section of social insurance law (LPGA) (<http://www.bk.admin.ch/ch/f/rs/8/830.1.fr.pdf>) which sets out the legal principles, notions and institutions of social insurance law. According to the LGPA, invalidity is "deemed to be a full or partial lack of earning capacity presumed to be permanent or long term" (Article 8(1)). Moreover, "any reduction of all or part of the earning capacity of the insured person in a balanced labour market involved, if this reduction is the result of injury to their physical or mental health and persists after the necessary treatment and rehabilitation measures, is considered to be a lack of earning capacity" (Article 7). The LGPA also defines the invalidity of minors and adults not working in paid employment prior to the injury to their health and who cannot be required to take employment (Article 8(2) and (3)). Lastly, the obligation to reduce damage is a principle that applies throughout social insurance law. Insured persons must agree to prescribed rehabilitation measures. Rehabilitation takes priority over the award of benefits. Invalidity can therefore be assessed only after any rehabilitation measures.

The concept of disability in the LHand and the concept of invalidity in the LGPA, which applies to social insurance, therefore cover different situations. The LGPA defines a particular form of lack of earning capacity (a lack of earning capacity resulting from a long-term injury to health) and qualifies this lack of capacity as invalidity. The LHand, however, evokes the loss of certain functions and qualifies this loss as disability. The repercussions of an injury to health on earning capacity are not part of the definition of disability. Disabled people therefore constitute a larger group than invalids under social insurance law. While the invalidity insurance system is intended to re-establish, improve or preserve the earning capacity that has been completely or partly lost by means of appropriate rehabilitation measures and offsets the remaining loss of capacity by paying an individual pension to specific people, the purpose of the LHand is to improve the overall conditions of society, from which an unspecified number of people will benefit.

Disabled people may also draw on rights in other areas of law. For instance, the Civil Code expressly mentions disabled children. It states that parents have a general duty towards any child to foster and protect their bodily, intellectual and moral development. They must also provide children, and in particular children with physical and mental impairments, with an appropriate general and vocational education corresponding as far as possible with the child's tastes and abilities. Disabled children have the same basic right to general education and vocational training as children who are not disabled. The right of protection also means that adults who, as a result of a physical, psychological or mental disability, are experiencing problems in daily life can also receive assistance. Federal

tax law contains some measures for disabled people. In the employment field, however, Federal law restricts contractual freedom, and therefore employers' free choice, only in certain cases and there is no provision under which it is compulsory for employers to recruit disabled workers.

#### *At Cantonal level*

Some Cantonal laws define the notion of disabled persons. In all cases, these definitions have legal meaning only within the limits of the law in question and the benefits for which it provides.

In Valais, disabled people are defined, in the law on the integration of disabled persons (Article 2, RS 850.6;

<http://www.vs.ch/Navig2/LoisVs/fr/Frame502.htm>), as "any person unable to provide themselves for all the needs of a normal personal or social life as a result of an impairment, whether or not congenital, of their physical or mental capacities". The Canton of Grisons, in its law on disabled persons (Article 1(2), *Gesetz über die Förderung von Menschen mit Behinderungen*, Bündner Rechtsbuch 440.00; <http://www.navigator.ch/gr/lpext.dll?f=templates&fn=main-h.htm>), defines as disabled any person who, as a result of a physical, mental, psychological, speech or sensory impairment, is disadvantaged to an extent that their participation in training, working life or social life is rendered difficult or impossible. In the legislation in Ticino (Article 3, *legge sull'integrazione sociale e professionale degli invalidi*, RL 6.4.7.1; <http://www.ti.ch/CAN/temi/rl/>), the focus is on the lack of earning capacity and the problems raised by social life, presumed permanent or long term, resulting from a physical or psychological impairment caused by a congenital infirmity, a disease or an accident.

## **B. Organisation of the legislation for disabled persons**

Switzerland is a federal state: the Confederation (central state) can act only within the powers vested in it by the federal Constitution (Fconst). Powers remain vested in the Cantons unless they have been transferred to the Confederation. The Confederation is responsible for some, and the Cantons for other, aspects of the integration and rehabilitation of disabled people.

The amended Federal Constitution, which came into force on 1 January 2000, introduced, in the area of *fundamental rights*, specific provisions for disabled people. It does not just prohibit discrimination, particularly on grounds of bodily, mental or psychological impairment (Article 8 (2), Fconst), but also states that legal measures are to be taken to eliminate any inequalities in respect of disabled people (Article 8 (4), Fconst). The Federal Law on the elimination of inequalities in respect of disabled people (LHand) is a response to this constitutional mandate.

Among the *social goals* listed in the Federal Constitution (Article 41), the Cantons and the Confederation undertake, supplementing individual responsibility and

private initiative, to ensure that any person benefits from social security, the health care that they need and also that any person is insured against the financial repercussions of invalidity and accidents (Article 41 (1a, b) and (2)). These provisions are placed on a concrete footing in the social insurance laws in particular. The Federal Law on invalidity insurance (LAI, <http://www.bk.admin.ch/ch/f/rs/8/831.20.fr.pdf>) is the most important in this field, but benefits are also available under the Federal Law on sickness insurance (LAMal, <http://www.bk.admin.ch/ch/f/rs/8/832.10.fr.pdf>), the Federal Law on accident insurance (LAA, <http://www.bk.admin.ch/ch/f/rs/8/832.20.fr.pdf>), the Federal Law on occupational welfare (LPP, <http://www.bk.admin.ch/ch/f/rs/8/831.40.fr.pdf>), the law on unemployment insurance (LACI, <http://www.bk.admin.ch/ch/f/rs/8/837.0.fr.pdf>) and the law on military insurance (LAM, <http://www.bk.admin.ch/ch/f/rs/8/833.1.fr.pdf>).

### **C. Benefits in the various fields of social security**

#### *At Federal level*

At Federal level, the main strand of social protection for disabled people is contained in the Federal Law on invalidity insurance (LAI). Invalidity insurance is a compulsory insurance for all natural persons resident or carrying on a profit-making activity in Switzerland.

Invalidity insurance benefits include rehabilitation measures, invalidity pensions, disablement allowances and collective benefits to promote aid for invalids.

Rehabilitation measures are intended to re-establish, develop or safeguard earning capacity. Entitlement to a pension is therefore subsidiary to rehabilitation and pensions are awarded only if rehabilitation is impossible or possible to an inadequate extent.

There are five kinds of rehabilitation measure. They include *medical measures* which do not aim to treat the disorder as such but which are directly necessary for occupational rehabilitation (the only exception being the treatment of congenital infirmities for which medical measures can be claimed up to the age of 20), *occupational measures*, including vocational guidance, initial vocational training, vocational retraining, placement services and capital assistance, *special education measures* for disabled insured persons aged under 20, the provision of *supplementary resources* and lastly the payment of *daily benefits*.

Occupational rehabilitation is of key importance for the integration of disabled people and includes a wide range of benefits in kind and in cash: initial vocational training, retraining and advanced training, guidance and placement services, capital assistance to help people to work on a self-employed basis, the payment of a daily benefit, under certain conditions, during rehabilitation, adaptations of work stations, machinery and plant to workers' disabilities and purchases of additional machinery and equipment.

The amount of pensions depends largely on the degree of invalidity. A quarter pension is aid for an invalidity of at least 40%, a half pension for an invalidity of at least 50% or 40% in demanding cases and a full pension for an invalidity of at least 66.66%. Invalidity insurance pensions are intended, under the constitutional mandate, appropriately to cover the vital needs of insured persons. These pensions are supplemented, where appropriate depending on the person's financial resources, by additional benefits paid by the Cantons.

Insured persons who, as a result of an impairment of their health, need constant attendance or personal supervision to carry out the basic activities of daily life are entitled to disablement allowances. Their amount depends on the extent of the disablement: minor, moderate or severe.

It is important to bear in mind that the LAI does not just make provision for individual benefits for the people concerned, but also for collective benefits. This type of benefit takes the form of subsidies for establishments, workshops and homes and subsidies for associations assisting the disabled and training centres for specialist personnel. These institutions work in the fields of employment, whether sheltered or normal, and social integration. Many private institutions help disabled people to find employment, provide mentoring in the workplace, offer continuing training, organise leisure activities for the disabled, advise and assist disabled people and their families and train teaching staff and staff specialising in assistance, training and occupational rehabilitation for the disabled. There are, for instance, over 300 sheltered workshops in Switzerland. These include employment workshops for the multi-disabled as well as industrial production centres carrying out work identical to private enterprises and forming part of the ordinary economic circuit. Since 2001, the decentralised posts offered by these workshops have also been subsidised. Invalidity insurance expenditure on collective benefits rose in 2001 to some CHF 1 765 million.

The Federal Law on accident insurance (LAA), which is compulsory for employees and optional for the self-employed, provides the following benefits: care and cost reimbursement benefits, daily allowances, invalidity and survivors' pensions, allowances for adverse effects on physical health, disablement allowances and supplementary resources.

The Federal Law on sickness insurance (LAMal), which covers the whole of the population, covers all medical care not covered by invalidity and accident insurance.

The Federal Law on occupational old-age, survivors' and invalidity pensions (LPP) is compulsory for all employees receiving an annual salary of more than CHF 25 320 (2003) from the same employer. This law also provides for the payment of pensions in cases of invalidity as a supplement to the basic invalidity insurance pensions.

### *At Cantonal level*

As a result of the constitutional division of powers between the Confederation and the Cantons, some protection tasks for disabled people are the responsibility of the Cantons. Although almost all the Cantons mention their duty to provide for the particular needs of disabled people in their Constitutions, only three have a specific law on this issue (Valais, Grisons and Ticino, see reply to point a).

Most Cantons have specific provisions on disabled people. However, there is certainly no Cantonal standard. In the case of employment, taking account of the interests of disabled people may range from simple encouragement to the recruitment and integration of disabled people under public authority employment policy. Most Cantons have, in the construction field, provisions making it possible to meet the needs of disabled people. Some Cantons do this in general terms, although some try to find answers geared more specifically to the particular needs of disabled people. In education, there is a minimum standard in almost all Cantons: state support for special schools or homes. Cantonal laws also contain a range of measures to integrate disabled children into ordinary classes. Most Cantons have opted for a mixed solution; they offer special support for such children after which they can be integrated into ordinary classes. In public transport, several Cantons have opted for a targeted approach, making it compulsory for vehicles and plant to be fitted out so that they can be used by disabled people. Others make it a requirement for the needs of disabled people to be taken into account when concluding service contracts. Others pay subsidies for the purchase of vehicles by organisations providing transport for disabled people. Some Cantonal tax laws set out tax relief for taxpayers who are infirm or for the person in their family who supports them financially. Generally speaking, the costs resulting from a disability are deductible.

### **D. Participation in social life**

The problem of disability and the integration of disabled people can be addressed in different ways. Action can be taken on the personal circumstances of disabled people so that they are able to benefit from living conditions that are the same as those of non-disabled people. In this case, state action targets the disabled person. This tends to be the main approach at present, especially in the area of social insurance (see point c) above). It is essential if disabled people are to lead dignified lives. It needs, however, to be supplemented by another approach in which action is taken on the environment in order to reduce the obstacles facing disabled people. This is the approach taken, at federal level, by the Federal Law of 13 December 2002 on the removal of inequalities in respect of disabled people (LHand). This law, which places the constitutional mandate given to legislators from the various public authorities (Confederation, Cantons, local authorities) on a concrete footing, is intended to bring about conditions enabling disabled people



to participate in society, in particular by helping them independently to forge social contacts. It defines inequalities in access to buildings and services and offers disabled people and recognised private organisations assisting disabled people the right to bring legal actions to assert their rights of access. The scope of the law is such that key buildings and services are seen from the point of view of social integration: buildings (public or private) open to be public which are constructed or renovated after the law comes into force, services offered by public authorities and the enterprises to which these authorities offer concessions (for instance public transport, telecommunications, radio and television), community housing with more than eight dwellings, buildings containing 50 work spaces and services for the public offered by private operators. In the latter case, the law prohibits discrimination (for instance a travel operator cannot refuse to include a disabled person in a group of tourists on the grounds that the latter is likely to slow down the pace of the trip or cause other problems for the other tourists, and a swimming pool or beach operator cannot refuse a physically disabled person as a customer on the grounds that other customers may be offended by the latter's infirmity); the law does not oblige private persons, however, to provide their services in special ways to make them accessible to disabled people (for instance restaurateurs are not obliged to provide menus in Braille). In the case of public transport buildings, equipment, vehicles and services, the law provides for adaptation periods of 10 to 20 years to take account of the relatively long-term pace of infrastructure renewal. Enterprises bringing forward the adaptation of their infrastructure to the new requirements of easy access are eligible for financial assistance. The Law also states that the Confederation must implement a policy to promote the integration of disabled people, by launching or taking part in the application of programmes to improve disabled people's integration, for instance in the areas of employment, training and leisure, and by conducting awareness campaigns and carrying out counselling work. The law also provides financial aid for Cantons and private organisations for the purposes of promoting and encouraging knowledge and use of sign language and the language knowledge of visually disabled people.

A revision of the Federal Law on invalidity insurance (LAI) was also adopted by Parliament on 21 March 2003 (and could, subject to a referendum, come into force on 1 January 2004). The amended law makes it possible in particular to step up the independence of disabled people by covering, at least partially, the costs resulting from their dependency or the regular care that they need. Doubling the amounts of the disablement allowance should enable more disabled people to live at home rather than in care and thus to lead an independent life. This allowance can also be claimed, and this is a major new development, by people whose psychological health is impaired and who require assistance without which they cannot live independently. The amended law also provides a legal basis for the financing of scientific research into disability issues, thus making it possible better to identify some problems and study potential solutions.

Most measures to promote the social integration of disabled people are currently the responsibility of the Cantons. The LHand is likely to step up current processes at cantonal level since it states that public authority services (including education) must be provided in such a way that they guarantee equal treatment in law and in practice for disabled and non-disabled people; in the case of access to training or continuing training, the refusal to use auxiliary means specific to disabled people or to provide personal assistance, or the fact that the length and schedule of the training services provided and the required examinations are not in keeping with the particular needs of disabled people, are deemed to be inequalities.

## **FINLAND**

### **A. Definition**

There is no general and common definition of disability in Finland, but it is defined in different ways in different laws concerning disability benefits and services. The entitlement to them depends on the way the disability has occurred, on the labour market situation of a person and on the degree of disability. The diagnosis of a person is not a deciding factor in the assessments of disability. If the cause of the disability is not an injury, the social security of a person with disabilities can also depend on the age of the person.

### **B. Organisation of the legislation for disabled persons**

The social security of people with disabilities consists of several laws and acts. The main policy is that a disabled person should try to sustain himself by employment. This is supported by rehabilitation, which can be both medical and/or vocational. Extra costs caused by the disability are covered to all by special allowances, which are not income tested. In order to promote the aim that ageing employees continue working, working capacity maintaining measures have become common in working life.

There are several institutes and schemes that provide maintenance and rehabilitation to the disabled persons. Age, labour market situation and the original reason for the disablement determines the responsible institution and scheme. The Social Security Institute (SII, *Kela*) is especially responsible for the rehabilitation and maintenance for young persons with disabilities. Occupational pension institutes are responsible for employed persons that have been disabled during employment. If the disablement is caused by an accident, by a traffic accident or in military service, then special insurance schemes are responsible for compensat-

ing the loss of income and for arranging rehabilitation. Employment authorities are responsible for unemployed persons with disabilities.

Municipalities are responsible for arranging social and health services for all residents. The Ministry of Social Affairs and Health leads the development of social welfare and health care legislation and services. Planning, guidance and supervision on the provincial level is defined as a duty of the Provincial State Offices.

Since the rehabilitation system is complicated there is separate legislation on co-operation concerning rehabilitation services. This obliges social welfare and health care, labour and educational authorities and the Social Insurance Institution to co-operate in co-ordinating the rehabilitation measures and services.

## **C. Benefits**

### ***Cash benefits to compensate extra costs***

The disability benefits paid by the Social Insurance Institution are intended to compensate the recipients for the handicap and financial strain imposed by the disability. The child disability allowance, disability allowance and pensioner's care allowance are paid without regard to a disabled person's income or assets. They are payable at three rates depending on the degree of special financial or other burden that the disability causes to the family, according to level of assistance, services, guidance or supervision needed and additional expenses caused. The allowances are free from tax. The allowances are not paid for people who are in long term institutional care.

The Child disability and Disability Allowance are funded by the state. Pensioner's care allowance is financed like national pension, i.e. by state and employer's contributions. At the end of 2001 the child allowance was paid for 46,750 children, 12 300 persons received disability allowance and 153,900 persons were in receipt of the pensioners care allowance.

### ***Disability Pensions***

The Finnish pension system consists of two statutory pension schemes providing employment pensions and national pensions. These schemes make up the retirement income security system, which provides pensions in respect of incapacity for work.

The National pension is intended to secure the basic livelihood of pensioners whose other pensions and compensations do not exceed the amount allowed for minimum national pension. To be eligible for national disability pension a person must (1) be between 16 and 64 years of age, (2) have an illness, defect or injury that prevents them from engaging in gainful employment by which they could support themselves or from working in their own household or (3) be permanently blind, without mobile ability or need constant attendance.

Young persons under 20 of age cannot get disability pension until their rehabilitation prospects have been assessed. As an alternative to disability pension, severely disabled young persons can get rehabilitation allowance during participation in vocational training or rehabilitation.

To be eligible for a full employment pension, the applicant must have lost at least 60% of the working capacity. A partial disability pension becomes payable to an employee who has lost between 40% and 60%. The partial disability pension is half of the full pension.

Ordinary disability pension is granted for an indefinite period, meaning that it will continue unless the recipient's circumstances change in a way that affects his or her entitlement. Disability pension can also be granted as a rehabilitation subsidy for a specific period.

Persons receiving full national (disability) pension can leave their pension in abeyance for a period of 6 months to 5 years if they find employment. This requires that the person earn at least 588.66 € a month. For the first two years regular earnings will be supplemented by a cash benefit equal to the special disability allowance.

There are a number of additional laws that provide pension in specific contingencies, for example the Accident Insurance, Motor Insurance, Military Injuries and Military Accidents Acts.

Employment pensions are financed by employers' and employees' contributions. The National pension is financed by state and by employers' contributions. At the end of 2000, as a total of 276,300 persons were in receipt of disability pension.

### **Service Provision**

Statutory health care and social welfare services

The basic responsibility for providing health and social services lies with the municipalities. The municipalities finance their operations mainly out of municipal tax, but also through government subsidy and client fees.

In health care services, the general legislation consists of the Primary Health Care Act (*Kansanterveyslaki*) and the Act on Specialised Medical Care (*Erikoissairaanhoidonlaki*); these two acts contain general provisions on the municipalities' duty to provide health care and medical care and related operations. There is separate legislation on occupational health care and mental health services.

The Social Welfare Act (*Sosiaalihuoltolaki*) states that it is the duty of municipalities to provide general social welfare services, which are: social work, child guidance and family counselling, home help services, housing services, institutional care, family care, support for informal care and services supporting the access to employment and on rehabilitative work for people with disabilities. There is separate legislation on special services for people with mental disabilities and

services and assistance for people with disabilities. This legislation is, however, secondary in nature and it is applied if the necessary services and supportive measures can not be provided on the basis of general legislation.

### ***Services and Assistance for People with Disabilities***

The Services and Assistance for the Disabled Act (*Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista*) aims at promoting the disabled persons chances to live and act with other people as equal members of the society and at both preventing and removing disadvantages and obstacles caused by disability. Municipalities are by law obliged to provide seriously disabled people with (1) transport services needed for being able to work, study, participate in society, and for recreation, (2) service housing to seriously disabled persons who owing to their impairment need regular assistance in everyday life and (3) interpreter services for the deaf-blind and for persons with serious hearing impairment or severe speech impairment. Furthermore (4) a seriously disabled person must be reimbursed for the costs of alterations to the flat and obtaining equipment and devices needed in it.

In 2001 the number of transport users was 67,000. Those disabled because of their high age have received the greatest benefits from the transport guaranteed by the law. The number of users of interpretation services was 3,100.

Municipalities can also provide rehabilitation counselling, adjustment training and reimbursement of the cost of hiring a personal assistant. In 2000 the number of those with a personal assistant was under 3,000.

### ***Special Care for the Mentally Handicapped***

Under the Act on Special Care for the Mentally Handicapped, special care is provided for a person whose development or mental abilities have been limited or disrupted by illness, defect or disability, whether congenital or acquired in childhood, and who cannot obtain the services needed under the general legislation. Finland is divided into seventeen districts for special care, which organise the services needed by persons with an intellectual disability. The central services are housing services, day activities and leisure activities, family care and residential care.

In Finland, about 22,000 mentally handicapped persons need special services to complement the municipal social welfare and health care services. About 14 per cent of them are in institutional care.

### ***Rehabilitation***

Rehabilitation can be both medical and vocational. The purpose of medical rehabilitation is to improve or maintain the client's functional capacity while the purpose of vocational rehabilitation is to improve or maintain the client's working capacity and opportunities for earning a living.

Municipal health care has the main responsibility for the medical rehabilitation and technical aids. Employment pension institutes provide vocational rehabilitation for persons who are employed or are eligible for (earnings-related) employment disability pension. The work accident and traffic insurance companies are responsible for arranging rehabilitation if the need for rehabilitation is caused by an occupational accident, occupational disease or a traffic accident. The labour authorities provide vocational rehabilitation to unemployed jobseekers with disabilities.

Seriously disabled persons aged under 65, who are not in public institutional care and who are in need of long-term and demanding rehabilitation measures are entitled to medical rehabilitation organised by the SII.

The SII is obliged to arrange vocational rehabilitation to those persons whose working capacity is essentially reduced if their rehabilitation has not been arranged on account of other legislation.

Medical rehabilitation consists of counselling, examination of the need for rehabilitation, different therapies, rehabilitation periods in an institution, adaptation training, rehabilitation counselling and special aids. They provide also technical aids, technical devices and other equipment for persons with disabilities.

Vocational rehabilitation may comprise vocational guidance, examination of the need for rehabilitation, work and training try-outs, work training, vocational and other education, employment counselling and job placement, support for running a business, aids needed at work or in studies, and financial support for rearranging working conditions.

#### Cash benefits during rehabilitation

During the period of rehabilitation either a daily allowance or a pension is paid depending on which scheme and institution is responsible for the rehabilitation. If a person receiving disability pension agrees to take part in vocational rehabilitation, a supplementary benefit will be paid in addition to the disability pension. If employment pension institutes have arranged the rehabilitation, the supplement is 33 per cent of the pension.

The SII can award a rehabilitation allowance if the aim of the rehabilitation is that a person can stay on in work, return to work or enter working life. Persons between 16 and 64 years of age are eligible for a cash benefit called rehabilitation allowance for the duration of their participation in a rehabilitation programme, which requires them to be absent from their regular job. The amount of the allowance equals the sickness daily allowance. Also additional costs, which are caused by the rehabilitation, can be compensated.

If a person receiving disability pension takes part in vocational rehabilitation arranged by the SII, a supplementary benefit will be paid in addition to the disability pension. This supplement is 10 per cent of the pension.

The rehabilitation allowance can also be awarded, at 80 % of its normal amount, for the time between the issuance of a rehabilitation decision and the beginning of rehabilitation or between two rehabilitation periods.

### ***Sheltered employment***

In Finland sheltered work or work activity is not a primary solution of disabled people's employment problems. In year 2000 about 3,000 persons were in sheltered employment and about 10, 000 participated in work activities for people with disabilities.

The support measures related to the employment of persons with disabilities was to be clarified by a change in legislation coming into force on April 1, 2002. The reform involves amending the Social Welfare Act to include new provisions concerning work activities and action to help disabled persons to find a job. Persons who have special difficulties in coping with everyday life because of disability, illness or a similar reason have been defined as the main target group.

The activities include arranging special support measures or a job, if the person finds it difficult to find a job with the aid of employment services or employment policy measures. Furthermore, municipalities can arrange work activities for persons with disabilities who can not enter the open labour market.

## **D. Participation in social life**

The Constitution Act (1999) contains an explicit prohibition against discrimination due to state of health, disability or any other reason related to the person. The rights of persons using sign language and of persons in need of interpretation services because of disability are recognised in the constitution.

The duty of the public authorities to promote the welfare, health and safety of the people also derives from the Finnish constitution. This duty is defined in more detail in the legislation on social welfare and health care. The legislation on the status and rights of patients and clients of the social welfare system also implements this constitutional mandate. The constitutional stipulation on the right to social security states that all those unable to provide for themselves the security they need for day-to-day life are entitled to the necessary basic income and care.

The changes of the Penal Code that entered into force in September 2000 include sanctions in order to make the anti-discrimination policy more effective. Discrimination in employment is prohibited by a separate provision of labour legislation.

The focus of disability policy is being shifted from services and rehabilitation to removing obstacles to the equal participation of disabled persons. Society as a whole is responsible for taking into account the needs of persons with disabilities. The improved accessibility of housing and the living environment, transport,

communication and information would enable their empowerment and participation.

In order to support the access of disabled job seekers to the labour market the employer can receive an employment subsidy for a maximum of two years. They may also be supported for arranging working conditions and for altering a workplace suitable for a disabled person. In the case of a seriously disabled employee, the assistance given by another employee at the workplace can be compensated for a maximum of two years.

The Target and Action Plan for Social Welfare and Health Care 2000-2003 involves several measures and development projects which are aiming at promoting the possibilities of participation of people with disabilities. A project has been started to improve the development of interpreter services in sign language and for persons with speech disabilities. Also recommendations for the quality of housing services and for assistive device services for people with disabilities are being prepared. The purpose of government-funded initiative new assistive technology (ITSE) project is to improve older and disabled persons' independent living and communication by utilising new assistive technology.

There is altogether about 80 disability organisations in Finland. These organisations have developed into interest organisations that draw attention to disabled persons' needs and advocate and promote their rights in society. The role and influence of disability organisations in society is significant. They have direct contacts with Parliament and influence actively political decision-makers. They act together and separately taking initiatives and issuing opinions at different levels of administration. Their representatives take part in working groups and committees of public administration.

Disability organisations also provide and develop special services needed by disabled persons, such as rehabilitation, educational and housing services. State and municipal authorities purchase services from disability organisations to supplement their own service provision. Disability organisations obtain part of their funding through their own campaigns and membership fees. A Finnish peculiarity is the Slot Machine Association, which has a monopoly to run slot gaming machines, and provides disability organisations with sizeable financial support from its revenue.



# SWEDEN

## **Background**

The Parliament agreed in May 2000 on a proposal from Government on a national action plan for disability policy.

The equal worth of all human beings is a fundamental principle for the design of Swedish society. All people possess knowledge, abilities and experience that are important to society. Society must therefore be designed in such a way as to allow all to contribute to its development and to enjoy full participation in the life of community. It goes without saying that people with disabilities are no exception. People with disabilities are citizens who enjoy the same rights and responsibilities as all other citizens.

A disability becomes a handicap only when the disabled individual comes up against shortcomings in the environment or in the organized activities of society. When measures are taken to make good these deficiencies and improve accessibility the handicap can diminish or disappear. Disability policy must be based on this fundamental insight. In one way or another most issues in society affect people with disabilities

Each public authority is responsible for compliance with the UN's Standard Rules and the national objectives for disability policy , within its own particular sphere of operations. The public authorities are also responsible for ensuring that their buildings, activities and information are accessible to people with disabilities. Special goals to be achieved have been set up. Those goals are supposed to be followed up every third year. The action plan is given for the period up to the year 2010.

## **Benefits**

### ***Care allowance***

As a parent to a disabled child a person can get care allowance. Concerning conditions and amounts references are made to the Missoc tables.

### ***Handicap allowance***

A person who because of disability needs special help or has special expenses may get handicap allowance. Concerning conditions and amounts references are made to the Missoc tables.

### ***Activity/sickness compensation***

These two benefits replaces disability pensions in Sweden. The benefits may be given to people whose ability to work has been reduced because of disability. Concerning conditions and amounts references are made to the Missoc tables.

According to the law on support and service to certain disabled people a person may get special support and service. The target group for this law is people who as a result of severe difficulties in daily life need support and service to a large extent. Such a person is entitled to advice and personal support, personal assistance, escort service, a contact person, relief service at home, short time stay outside home, short time supervision for students over 12 , family housing or housing with special service, housing specially adapted for grown up people and daily activity. The municipalities and the county councils are responsible for support and service according to the law.

It is also possible to get attendance allowance if a person needs help from another person more than 20 hours a week. Concerning conditions and amounts references are made to the Missoc tables.

In order to facilitate for a disabled person to live as normally and independently as possible different means of assistance are of great importance. Such means which are needed for a certain occupation, the person can get through the labour market authorities. Some means needed for housing are provided by the municipalities and pedagogical means adapted for disabled people are provided by the educational system. Personal means of assistance are provided by the municipalities and the county councils. Those means must be written out prescriptions for and tested by doctors, physiotherapists etc. Normally those means are free of charge for the disabled.

Car allowance is provided for persons who cannot use public transportation because of a handicap. Concerning conditions and amounts references are made to the Missoc tables.

## **UNITED KINGDOM**

### **A. Definition**

Different definitions of disability and conditions of entitlement are used in UK legislation for individual schemes and services. The definition of disability under the Disability Discrimination Act (DDA) is comprehensive whereas social security benefits are awarded to disabled people on the basis of incapacity for work or

care and/or mobility needs. There are no plans to harmonise definitions because they serve different purposes.

### ***Definition in the Disability Discrimination Act (DDA)***

The DDA protects disabled people against discrimination in employment, in access to goods, services and facilities, and in education and transport. The DDA defines a disabled person as a person with a 'physical or mental impairment, which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.' This definition is wide-ranging and covers people with physical disabilities, hearing or visual impairments and can also include people with mental illness, arthritis, epilepsy, diabetes, and other conditions.

### ***Definitions linked to various benefits***

Disability Living Allowance (DLA) is a non-contributory benefit paid to those people who are so severely disabled as to need assistance in leading a normal life or unable to walk properly. Disability must have arisen before age 65. (*Social Security Contributions and Benefits Act 1992, Welfare Reform and Pensions Act 1999, Social Security (Disability Living Allowance) Regulations 1991*)

Attendance Allowance (AA) is a weekly benefit paid to those who are so severely disabled so as to need a sufficient level of care and attention from someone else. They must be age 65. (*Social Security Contributions and Benefits Act 1992, Welfare Reform and Pensions Act 1999*)

An Industrial Injuries Disablement Pension (IIDP) is paid to an employed earner if he suffers as the result of the relevant accident from loss of physical or mental faculty assessed at 14% or more. Loss of faculty is the damage or impairment of part of the body or mind caused by industrial accident or disease. (*Social Security Contributions and Benefits Act 1992*)

Payments of public funds are made in cases where severe disablement occurs as a result of vaccination against certain diseases. (*Vaccine Damage Payments Act 1979*)

War pensions are available to those who have suffered a disablement as a result of war or as a result of service in the armed forces.

(Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983)

## **B. Organisation of the legislation for disabled persons**

The UK Government is committed to developing comprehensive, enforceable civil rights for disabled people against discrimination in society and at work. The new Department for Work and Pensions brings together help for disabled people in gaining employment, along with disability rights, and social security benefits.

### ***Disability Discrimination Act (DDA)***

The DDA provides significant protection for disabled people against discrimination in the areas of employment, access to goods services and facilities, education and transport.

Part II of the Act makes it unlawful for employers to treat disabled employees and job applicants less favourably than others because of their disability, unless the treatment can be justified. Employers must make reasonable adjustments where their premises or employment arrangements cause substantial disadvantage to a disabled person compared to a non-disabled person. The Act currently applies to employers with 15 or more employees and around 75% (100% from April 2004) of all employees are covered. Disabled people can complain to an Employment Tribunal.

Part III of the Act makes it unlawful for those providing goods, services and facilities to treat disabled people less favourably than other people. Service providers must make reasonable adjustments to the way they provide their services so that disabled people can use them. Disabled people who believe a service provider has discriminated against them can take their case to a court of law.

The Special Educational Needs and Disability Act requires all education providers to ensure that disabled students are treated no less favourably on account of their disability and that reasonable adjustments are made for them.

DDA regulations on transport require accessibility features in all new vehicles with over 22 passengers used on local and scheduled services. Taxis have a duty to accommodate guide, hearing and assistance dogs. Transport infrastructure, including railway stations and airports, is covered by Part III of the DDA, which requires service providers to take reasonable steps to ensure that their services are accessible to disabled people.

### ***Social Security benefit legislation***

There is no unified law for the disabled with regard to benefits. Several regulations deal with the concept of disability. Many of the benefits in one legislation are dependant on the payment of benefit under other legislation e. g the payment of disability premium with income support is dependant on a claimant or their partner receiving AA, DLA, the disability element or severe disability element within Working Tax Credit, etc

Acts of Parliament set out the general purpose of benefits and provide for separate regulations, which contain the detailed conditions of entitlement. For example, the Social Security Contributions Act 1992 is the primary legislation for most social security benefits, but the detailed qualifying conditions for Disability Living Allowance are in the Social Security (Disability Living Allowance) regulations 1991

## **C. Benefits in the various fields of social security**

1) People unable to work because of long-term sickness or disability can receive income maintenance help through Incapacity Benefit (IB) (some currently receive Severe Disablement Allowance (SDA) instead, but this benefit is no longer available to new applicants) or if they do not qualify for IB and/or have insufficient resources, Income Support (IS).

### ***Incapacity Benefit (IB)***

A claimant must produce medical evidence, be under pension age and satisfy the following contribution conditions: -

- must have paid or been credited contributions equal to at least 25 x Lower Earnings Limit (LEL) in one of the last 3 tax years before the benefit claim year and
- must have paid or been credited contributions equal to at least 50 x LEL in both of last two tax years before claim starts.

### ***Severe Disablement Allowance***

This provides an income for people who are suffering from long-term illness or disablement who have not paid enough National Insurance Contributions to qualify for IB. It is non-contributory, not income related, tax-free with no upper age limit. Since 6 April 2001 it has not been available for new claims.

Existing claimants must continue to meet the threshold of incapacity. People whose incapacity began after age 20 must also continue to be at least 80% disabled. From April, people who have become disabled before the age of 20 may be able to receive Incapacity Benefit without having to satisfy the contribution conditions. Age 20 cut-off is extended to 25 for those who are in education or training before age 20.

### ***Income Support***

Income Support provides cash help for people who are not required to be available for work, whose income is below a certain level and who work less than 16 hours a week (24 hours for partners).

A disability premium is payable to IS customers under 60 if they or their partners receive DLA, the disability element or severe disability element within Working Tax Credit, long-term IB or meeting certain other disability conditions. There is also a disabled child premium, an enhanced disability premium for those in receipt of the DLA higher-rate care component, and a severe disability premium for those living alone without a person to care for them.

2) Disabled people and their carers may be entitled to the following benefits.

### ***Disability Living Allowance (DLA)***

For disabled people claiming before age 65 who have personal care and/or mobility needs because of severe disability. They must have needed help for 3 months and be likely to need it for at least a further 6 months. People who are terminally ill and not expected to live for longer than six months automatically receive the highest rate of the care component straight away. A claimant fills in a self-assessment claim form which identifies care and mobility needs, and they may have a medical examination.

DLA has two components: the care component, which has three rates and the mobility component, which has two rates. The amount payable depends on the care and mobility needs of the claimant. The care component is payable from the age of three months. The higher rate of mobility component is payable to those aged 3 or over, and the lower rate of mobility component is payable to those aged 5 or over. Both components may be awarded but not necessarily for the same period.

### ***Attendance Allowance (AA)***

AA is a benefit for disabled people from age 65, who due to disability, have needed help with extra care costs, for at least 6 months. A self-assessment claim form identifies care needs, and a medical examination may be necessary. There are two rates, the lower rate for day or night care and the higher rate for day and night care. Terminally ill people not expected to live for longer than six months automatically receive the higher rate and straight away.

### ***(Carer's Allowance (CA) –(previously Invalid Care Allowance)***

CA is a cash benefit for people who care for a severely disabled person. It is non-contributory and taxable. Adult dependency additions are payable. To qualify a person must: provide care for at least 35 hours per week for a severely disabled person (receiving AA, the middle or highest rate of care component of DLA, or the equivalent rates of Constant Attendance Allowance), be over 16, not be in full-time education (21 hours attendance a week); and not be receiving more than £77 a week, after deduction of allowable expenses, from paid employment. Entitlement to Carer's Allowance provides access to the carer premium paid with the income-related benefits

### ***Independent Living Fund***

To support disabled people who wish to live independently. There are two independent living funds operating which are independent and discretionary trusts managed by a Board of Trustees and wholly financed by grant in aid from the Government.

The Independent Living (Extension) Fund looks after only beneficiaries of an earlier, now closed, Independent Living Fund and accepts no new applicants.

The Independent Living (1993) Fund is able to accept new applications from severely disabled people aged 16-65 who are receiving the higher-rate care component of DLA and services and/or cash payments in lieu of services to a value of at least £200 per week from their local authority.

### ***Vaccine Damage Payments***

A person who has become severely disabled as a result of being given vaccine against specified illnesses may receive a single lump sum payment of £100,000.

*People whose disability has arisen because of an industrial accident or through service in the armed forces are compensated through Industrial Injuries Benefits (IIDB) or War Pensions (WP).*

IIDB is a non-means tested, tax-free, non-contributory benefit payable to people who have become disabled as a result of an accident at work or as a result of an industrial disease. IIDB is payable even if the person continues or returns to work. The rate of benefit depends on the level of the person's disability.

War Pensions are payable to ex-members of the armed forces as a result of disability due to service. The degree of a person's disability is assessed by comparing their condition to that of a normal healthy person of the same age and sex. Pension provision is also provided under the War Pension Scheme for other groups such as merchant seamen injured as a result of war, and Poles who served under British Command during World War Two. There are various supplementary allowances that can be paid with a basic war pension provided the relevant qualifying criteria are met. They aim to cover specific contingencies, for example, personal attendance, age and mobility.

### ***Child Tax Credit (CTC)***

CTC is one of the new tax credits, Working Tax Credit (WTC) and CTC, which were introduced in April 2003. WTC and CTC replaced Working Families' Tax Credit, Disabled Person's Tax Credit and children's tax credit and will replace the child elements of income support and the support for children currently provided within certain other benefits.

CTC, an income-related award, provides a secure stream of income for families with children regardless of whether the adult/s in the family are in work or not. It is made up of various elements and can include a disability element and a severe disability element for the child/ren, where appropriate. CTC is paid directly to the main carer of the child/ren.

*(For WTC, see d) under Welfare to Work)*

## **D. Participation in social life**

### ***The Disability Discrimination Act 1995***

The UK Government is committed to extending basic rights and opportunities for disabled people that will help enable them to play a full part in the community. The Disability Discrimination Act (DDA) provides significant protection for disabled people against discrimination in the areas of employment, access to goods services and facilities, education and transport. From 2004, service providers will be required to take reasonable steps to remove, alter or provide a reasonable means of avoiding physical features that make it impossible or unreasonably difficult for disabled people to access a service.

### ***Disability Rights Commission (DRC)***

The Disability Rights Commission, an independent body set up and funded by Government, helps disabled people secure their rights under the DDA and provides an information and advice to employers and service providers on their duties under the Act. It has four specific duties to: work towards the elimination of discrimination against disabled people; promote the equalisation of opportunities for disabled people; promote good practice in the treatment of disabled people; and keep the DDA under review.

The UK government has been running media campaigns to raise public awareness of disability, and to improve the public's understanding of the barriers faced by disabled people. Recent campaigns have included TV and radio advertising, posters, articles and endorsements by celebrities. The campaigns aim to challenge stereotyping and raise awareness of rights and responsibilities under the DDA. Such campaigns are an essential accompaniment to legislation to achieve an inclusive society. The Government is also working with the advertising industry to encourage them to include images of disability in mainstream advertising, so that disabled people are seen as part of the community.

### ***Welfare to Work***

The UK Government is committed to the principle of work for those who can, and security for those who are unable to work. The new Department for Work and Pensions combines, help for disabled people in gaining employment with disability rights and benefits for the first time.

*Access to Work* provides practical support for people with disabilities to help them secure and retain jobs, including special aids and equipment, adaptation to premises, human support to help workers meet work and personal needs in the workplace and assistance with fares to work.



*Workstep* provides support to disabled people facing significant barriers to employment, with the aim of enabling people to progress to unsupported employment where appropriate.

### ***Working Tax Credit (WTC)***

WTC was introduced in April 2003 and replaces Working Families' Tax Credit and Disabled Person's Tax Credit. WTC is a payment to top up the earnings of low paid working people, including those who do not have children. It brings people with disabilities into the same system of support as other workers, but with additional amounts to recognise disability. *STETility and the Specialised Vehicles Funds*

Recipients of the higher rate mobility component of DLA are eligible to join the Motability scheme, which uses their state benefit to provide them with a car at preferential rates. The Motability, an independent charity, works in partnership with the Government. It also administers the Specialised Vehicles Funds, which provide grants for heavily adapted vehicles for wheelchair users and other severely disabled people.

### ***Disabled Persons Badges for Motor Vehicles Scheme (Disabled persons (Badges for Motor Vehicles) Regulations 2000***

This is a scheme, operated by the local authorities, for people with severe mobility problems, which allow them to park a motor vehicle "free of charge" near to facilities, shops and public buildings. To qualify, a person must be, in receipt of the highest rate of mobility component of DLA, or registered blind, or in receipt of mobility supplement, or driving a motor vehicle regularly and have severe disability in both upper limbs and is unable to turn the wheel of a vehicle (even if the steering wheel is fitted with a turning knob) and permanently and substantially disabled making it difficult to walk.

### ***Health and care in the community***

Disabled people in Great Britain are entitled to free medical treatment under the National Health Service. Local authorities provide a variety of services such as, day centres, luncheon clubs and recreational classes, home help services, meals on wheels i.e. meals delivered to the home and laundry services

The Community Care (Direct Payments) Act 1996 enables local authorities to make cash payments instead of offering community care services to disabled people to purchase their own community care services.



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