Long-term care – German experience and the experiences of other European countries*

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Long-term care (LTC) – a new social risk

The development of LTC benefits and services constitutes one of the main testing grounds for the innovative capacities of European welfare systems.

To date, LTC/dependency has been a social risk not adequately covered by the majority of European social welfare systems. That means that many Member States in their current state are largely unable to satisfy the needs of an increasing number of care-dependent people.

The *OECD* defines LTC care *as a range of services required by persons with a reduced degree of functional capacity, physical or cognitive, and who are consequently dependent for an extended period of time on help with basic activities of daily living* (this definition being the product of concerted efforts between the OECD Secretariat, governmental delegates and experts from OECD countries).

LTC can be part both of the private sphere, where solely members of the core family, relatives, friends, neighbours and other non-professional persons are responsible for providing unpaid informal care, but it can also be considered as a *collective responsibility* and, in accordance, as a task for the state with respect to organising, financing and providing formal care.

Though most EU Member States have set up different kinds of social security systems, which provide, among others, benefits intended to provide for sick, frail and elderly people as well as for persons with disabilities who are dependent on the help of third parties, the bulk of caring services dealing with the abovementioned basic activities of daily living is still provided by, mostly female, family members and other informal carers ("daughter's care").

However, there are limits to what these informal carers can do, especially when dependency is very severe, for instance because of dementia (e. g. Alzheimer disease).

In addition, there is a growing need for formal LTC care because of the demographic development, i. e. higher life expectancy and lower natality, social change, e. g. the increasing both geographical and professional mobility as well as the rising participation of women in the labour market and in the economy, in general. There are changes of life-styles, too, for instance a trend towards individualisation and an increase in the number of singles and single householders.

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These developments lead to a decline in the availability of family and other informal carers as well as to an increase in the need of professional and paid care.

The establishment of specific formal LTC systems in countries like Germany, Austria, Belgium (Flemish Community), Luxembourg and Spain, just to mention the most recent examples in the EU, is a result of the growing public awareness that informal care will be of much less avail in the future and that there is therefore a strong case for the setting in place of public LTC/dependency-coverage by the systems of social protection.

Long-term care in EU law

As regards the dealing with the social risk of LTC/dependency in EU law and policy it must be referred, first of all, to the Charter of Fundamental Rights of the European Union of 7 December 2000, which is today since the entry into force of the Lisbon Treaty on 1 December 2009 an integral part of EU primary law. According to Article 34 of the Charter the Union recognises and respects the entitlement to social security benefits and social services providing protection in, among other contingencies, dependency.

With respect to EU coordination law LTC benefits, though not listed neither in Article 4 (1) of Regulation 1408/71 nor in Article 3 (1) of Regulation 883/04, must be regarded as sickness benefits within the meaning of this provision according to the rulings of the European Court of Justice in its C-160/96 *Molenaar*, C-215/99 *Jauch*, C-208/07 *Chamier-Gliszczinski*, C-388/09 *da Silva Martins* and *Commission vs. Germany* – 2012 – judgments. Article 34 of Regulation 883/04 which is the only provision in the Regulation dealing with LTC/dependency so far is intended to prevent an overlapping of LTC benefits in case that a recipient of such a benefit in cash is at the same time entitled to claim benefits in kind intended for the same purpose in another Member State. Then the amount of the cash benefit can be reduced by the amount of the benefit in kind which can be claimed from the institution required to reimburse the costs of these benefits.

As it is generally recognised that LTC benefits and sickness benefits, despite many similarities, also differ in their aims, instruments and means, there may be a case for the introduction of a LTC chapter in the Regulation 883/04 in order to tackle the challenges produced by this new social risk.

Long-term care – the German experience

The above mentioned *Molenaar* judgment concerned the German Care Insurance Law (*Pflegeversicherung*) which was introduced in 1995 and is designed to cover the costs entailed if insured persons become reliant on care, that is to say, if a permanent need does arise for those insured to resort, in large measure, to assistance from other persons in the performance of their daily routine (bodily hygiene, cooking, nutrition, moving around, housework, etc.). German social law distinguishes clearly between 'cure' and 'care', homecare as well as residential care being excluded from statutory health insurance as the corner-stone of the German healthcare system. The care insurance scheme is thus in line with the tradition of social protection in Germany, which is based primarily on social insurance, while adding at the same time a specific structural feature to the established overall system of social protection insofar as there is the statutory, i. e. public care insurance, on the one hand, and the private care insurance, on the other hand. The law assigns the insured persons to one of the two insurance schemes.

Notably persons whose income exceeds the limit for compulsory insurance under the public scheme or who are voluntarily insured under the statutory health insurance scheme have the right for substitutive private instead of statutory care insurance and can benefit from premiums which may be much lower than the contributions which the insured would be liable to pay under the statutory scheme. Besides, supplementary voluntary private care insurance insures eligible care expenses not covered by neither the statutory nor the private substitutive care insurance scheme and thus can offer complementary coverage.

Whereas the public scheme follows the pay-as-you-go principle, private LTC insurance is

a partially funded insurance scheme. Rather than being calculated on the basis of income, premiums for private LTC are graded according to the age when signing the insurance policy. However, by law, premiums cannot exceed the maximum contribution for statutory LTC.

Care benefits are for home care, nursing home care as well as day and night care. Persons in need of care are entitled to choose between in-kind benefits for community care and (lower in value than the equivalent services in kind!) cash benefits (care allowances). For as regards this latter benefit, the beneficiary, i. e. the dependent person, is not obliged to use this money for care, but the use of the amount granted by LTC insurance is at his discretion as long as care-giving, for instance by an unpaid family member, for instance a daughter or a daughter-in-law, is provided and guaranteed in an appropriate way.

Family care which is still the predominant kind of care covering about two-third of those in need of care is still considered by the legislator to be the best way to provide for the need of people in need of care and has therefore been strengthened both through the introduction of the above-mentioned cash benefits which the recipient may (or may not) pass on to a family or to another informal carer as well as by the provision, that contributions are paid on behalf of the informal carer to statutory accident at work and pension insurances by the care insurance funds in order to encourage home care and to stimulate volunteering services. Thus the priority which is given to informal care by the legislator is reflected in old-age and invalidity pension law in so far as years of child-raising as well as periods of caring for dependent persons may give legal entitlement to old-age pensions, because they are reckoned as an equivalence of periods of remunerative work and thus enter into the calculation of pension years.

Additional benefits provided under LTC insurance are the following ones: nursing aids that facilitate LTC, for instance a special bed, other special aids, allowances to pay the cost of modifying the home of the cared-for person, cost-free nursing care courses for informal carers, respite care which does provide carers a break from normal caring duties and thus alleviates the burden of care giving, and entitlement of dependent persons to care consultant and management services which can take place at so-called service points.

Care-persons who care for family members at least 14 hours per week have the right to join unemployment insurance on a voluntary basis.

Subject to certain exemptions concerning temporary stays, the right to receive benefits is suspended for the period that the insured person is abroad. That legal provision must, however, be read in the light of the jurisdiction of the European Court of Justice (ECJ) (see, for instance, the above-mentioned *Molenaar* case) in which the Court held that EU coordination law precludes entitlement to a care allowance being made conditional upon the residence of the insured person in the territory of the Member State where he is insured.

Since 2005, child-raising is given special recognition in the law relating to statutory LTC insurance insofar, as childless contribution payers are required to pay a supplement of 0.25 per cent, one rationale (to my opinion not convincing) for this additional contribution being that childless people are expected to receive higher benefits from the care insurance scheme relative to people with children, because of the higher probability of dependent people with children to opt for – less costly – cash instead of in-kind benefit.

Contrary to statutory health insurance benefits, LTC benefits only cover needs of a certain relevant frequency of quantity and quality, i. e. the need of care of a specific degree. Furthermore, LTC benefits do not aim at covering the total amount of the cost of care (as is the case in statutory health insurance with regard to the cost of cure) but are intended to provide only a supplement to the help provided by the family and other informal carers or to ease the financial burden of institutional care.

Means-tested social assistance is the last resort ('safety-net') for those whose needs are not covered fully by the LTC insurance and who cannot afford the benefits needed neither from their income from work and assets nor from financial assistance from third parties, i. e. relatives or other sources such as other social security benefits, occupational benefits or private insurance.

Long-term care – experiences of other Member States

United Kingdom

Traditionally, the German social state and the British welfare state have been considered to be two different ideal types of social protection ("Bismarck" versus "Beveridge").

With regard to the respective LTC-systems the differences are indeed profound. The reform of LTC in the UK has been among the most debated social policy issues for the first decade of the 21th century after publication of the Report of the Royal Commission on Long-Term Care (to which the *author of this paper* was submitted a statement on behalf of the German LTC insurance scheme as well as on the issue of introducing an insurance-based LTC scheme in the UK). Underlying the British debate were concerns both about the future affordability of LTC and the fairness of the current funding system, the key issue in the financing debate being how far people should fund their own care and how far they should be publicly funded and whether public funds for LTC should benefit only those who cannot afford to pay for themselves or whether there should be a universal entitlement to free LTC.

In comparison to the German and other insurance-based LTC systems the English system can be characterized as residual in so far that it only supports those with very severe needs who are unable to meet the costs of their care. Local authorities provide home care, adaptations to the home, meals on wheels, special aids and equipment, attendance at day-care centres, temporary respite care, and they can arrange admission to residential and nursing homes.

Attendance Allowance and Disability Living Allowance were the cash benefits payable to people with care needs, too. A Carer's Allowance was payable to help people who look after someone who is disabled.

LTC in the UK is usually taken to mean assistance with personal care tasks such as dressing and bathing, nursing care and help with domestic tasks such as shopping and preparing meals. The system relies heavily on informal or unpaid care provided by family members, friends or neighbours, too.

Formal services are provided by a wide range of agencies such as local authority social services, community health services, both for-profit and non-profit residential care homes, nursing homes as well as home-care and day-care services. These services are financed by the National Health Service, local authorities, charities and by people in need themselves. While healthcare services are, as a rule, free of charge, social care is mostly means-tested. The eligibility for publicly funded care and support takes into account the availability of informal care.

The UK LTC system is thus to a considerably extent a local system and marked by a mixed economy both of finance and supply.

As LTC is a devolved responsibility to the nations of the UK, in Scotland the recommendation of the above-mentioned Royal Commission was adopted and free personal care was introduced in 2002. In England, a so-called 'partnership'-model of funding personal care was discussed, whereby the costs of care would be shared partly by the state and partly by the individual.

As a result of its evolution from earlier welfare systems and its far regional relaxation of means-testing the LTC system (if it is a 'system'!) is so complex that a former Commissioner for Social Care Inspection concluded that there is *a lack of clarity and transparency in practice, particularly relating to the complexcity of the framework, so neither professionals nor people using services are confident of their understanding*.

Austria

The existing LTC scheme was established in 1993. Though Austria has similar social welfare traditions as Germany, the Austrian LTC scheme is not a social insurance scheme, but is financed mainly by taxes and by individual cost sharing paid by the persons in need of care themselves and/or their relatives. There are two more or less separate parts: One pillar that provides for benefits in cash and which comes under federal law and has its origins in the pension insurance scheme as the recipients of pension benefits who had been assessed as helpless were until the entry into force of the new scheme entitled to a lump sum, i. e. the so-called allowance for those without help (*Hilflosenzuschuss*). For persons dependent on

considerable or permanent assistance, additional support was only provided by social assistance schemes. The second part of the actual LTC scheme is based on regional law and still is characterized, to a certain extent, by social assistance. In accordance, the main pillar of the system is a tax-financed cash benefit scheme aiming at covering part of the additional care-related expenses in order to improve the opportunities of self-determination for all persons in permanent need of care. (In so far as the Austrian scheme has improved the situation of persons in need of care by giving them better self-determination and more freedom of choice in organizing their own individual care situations it is in conformity with the principles governing the *United Nations' Convention on the Rights of Persons with Disabilities* of 2006, which stresses the principles of self-determination and autonomy of the individual as core elements of human dignity and which must be taken into consideration by all EU Member States in which this convention is legally binding, for instance in Germany since 26 March 2009.)

In a most recently published study on international standard setting and innovations in social security which dealt in particular with new social risks the national trESS-expert for Austria *Walter Pfeil* characterized the Austrian LTC scheme as having been built upon already existing structures both at federal and regional level. The scheme is based upon a strict separation between LTC care benefits and sickness benefits (as in Germany), though there are many links to the sickness scheme. The Austrian scheme provides clear legal entitlements to cash benefits, which can be drawn without any qualifying periods, without means-testing and irrespective of age conditions. However, there are only rather few legal entitlements to LTC benefits in kind, and professional care services do not cover all regions.

Sweden

In Sweden as in other Nordic countries it is up to the municipalities to provide home care, semi-residential care and residential care. Persons with a very low pension may be entitled to other, e. g. housing benefits.

As regards benefits for the carer, support from the municipality consists in the provisions of information, the support of groups of carers, etc.

Other countries

In most other Member States, the system (if it can be called "a system") may be considered to be a hybrid one insofar, as different branches of social security provide different kinds of benefits for sick, disabled, elderly persons as well as for persons in need of care as is the case in Poland, too.

Outlook

As regards the case for a reform of LTC provision see Bernd Schulte, *New Social Risks: Introduction and Analysis* (in: Becker, U./Pennings, F./Dijkhoff, T. (eds.), *International Standard-Setting and Innovations in Social Security*, Alphen aan den Rijn (The Netherlands) 2013, pp. 207 et seq. and 275 et seq.: Formal long-term care schemes may increase worldwide. In the European Union there is a growing concern on this area and an endeavour to develop certain common standards.

Opieka długoterminowa – doświadczenia niemieckie i innych krajów Unii Europejskiej

Bernd Schulte

STRESZCZENIE: *W artykule przedstawiono doświadczenia niemieckie i innych wybranych krajów Unii Europejskich w zakresie long-term care. Omówiono opracowaną przez OECD definicję LTC, zgodnie z którą na opiekę długoterminową składa się cały szereg usług dla osób mających problemy w codziennym funkcjonowaniu, powodujące konieczność korzystania ze wsparcia osób trzecich.*