

ACT 39/2006, of 14th December, on the Promotion of Personal Autonomy and Care for Dependent Persons

JUAN CARLOS I KING OF SPAIN

To all those who read and understand this Act. Be it known that Parliament has passed and I have signed into law the following Act:

EXPLANATORY MEMORANDUM

1. Care for dependent persons and the promotion of their personal autonomy is one of the main challenges faced by social policy in developed countries. The challenge is none other than to care for the needs of these people, who because they are in a particularly vulnerable situation, require support in order to carry out the essential activities of daily living, attain a greater degree of personal autonomy and be able to fully exercise their citizen rights.

In October 2003, the Plenary Session of the Congress of Deputies passed the Renewal of the Toledo Pact with a 3rd Additional Recommendation that stated: «it is therefore necessary to configure an integrated system to address the phenomenon of dependency from the perspective of globality and the Committee considers that urgent regulation is required, including the definition of dependency, the current status of its coverage, the challenges that are expected and the possible alternatives for protecting such dependency».

The acknowledgement of the rights of the dependent persons has been highlighted by several documents and decisions made by international organisations, such as the World Health Organisation, the Council of Europe and the European Union. In 2002, under the Spanish Presidency, the European Union decided on three criteria to govern the dependency policies in the member States: the universality, high quality and sustainability in time of the systems that are deployed.

The conclusions of the Report by the Sub-Committee on the study of the current status of disability, on 13th December 2003, coincide regarding the need to configure a comprehensive system to address dependency from a global perspective with the active participation of society as a whole.

In Spain, demographic and social changes are leading to a gradual increase in the dependent population. On the one hand, it is necessary to consider the important growth in the population aged over 65 years, which has doubled in the last 30 years, going from 3.3 million people in 1970 (9.7 percent of the total population) to more than 6.6 million in the year 2000 (16.6 percent). To this, we have to add the demographic phenomenon known as «ageing of ageing», i.e., the increase in the sector of the population aged over 80 years, which has doubled in just twenty years.

Both of these issues outline a new reality for the elderly population, which leads to dependency problems in the latter stages of life for increasingly large numbers of people. Moreover, several studies highlight the clear correlation existing between age and situations of disability, as is evident from the fact that more than 32 per cent of people aged over 65 years have some form of disability, whereas this percentage drops to 5 per cent for the rest of the population.

To this situation, derived from ageing, we have to add dependency for reasons of illness and other causes of disability or limitation, which have increased in recent years

because of the changes that have occurred in the survival rates of some chronic diseases and con-genital alterations and also due to the consequences derived from traffic accidents and accidents at work.

According to the 1999 Disabilities, Impairments and Health Status Survey, 9 per cent of the Spanish population has some disability or limitation that has caused, or may cause, dependency for activities of daily living or a need for support towards personal autonomy under equal conditions. For this group, the recently ruled Act 51/2003, of 2nd December, on Equal Opportunities, non-discrimination and universal accessibility for the person with disabilities.

2. Attending to this sector of the population has therefore become an unavoidable challenge for the public powers, requiring a response that is firm, sustained and adapted to the current model of society. It must not be forgotten that up to now, it has been the families, and especially, women that have traditionally taken on the care of the dependent persons constituting what has been referred to as «informal support». The changes in the family models and the gradual incorporation of almost three million women into the job market in the last decade introduce new factors in this situation, which mean that it is indispensable to review the traditional care system in order to ensure adequate capacity to care for the people in need of such assistance.

The text of the Spanish Constitution, in articles 49 and 50, refers to the care of disabled and older persons and to a system of social services promoted by the public powers for the welfare of citizens. If in 1978 the fundamental elements of this model of the welfare state focussed, for all citizens, on healthcare protection and the Social Security System, the social development of our country since then has given fundamental importance to the social services, mostly organised by the Autonomous Communities, in special collaboration with the third sector, as the fourth pillar of the welfare system, in care for the dependent population.

On behalf of the Public Administrations, the needs of the older persons and in general, of those that are affected by dependency, have been catered for up to now essentially at Autonomous Community and local levels, and in the context of the Concerted Plan on the Basic Benefits in Social Services, in which the General State Administration also participates and at state level, the Plans of Action for Disabled and Older Persons. On the other hand, the Social Security System has been taking responsibility for some elements of care, both in the care for older persons and in situations linked to disability: major invalidity, third-party benefits in non-contributory invalidity pensions and family benefits for dependent children, as well as social service benefits in re-education and rehabilitation for persons with disability and care for older persons.

It is an undeniable fact that the entities in the third sector that work in the area of social work have been participating for years in the care of the dependent persons and supporting the effort of families and local corporations in this regard. These entities form an important social network that prevents the risks of exclusion of the affected people.

The need to guarantee citizens and the Autonomous Communities themselves, a stable framework of resources and services to care for the dependent population and the progressive importance of this care have led the State to intervene in this field with the regulation contained in this Act, which configures it as a new form of social protection and extends and complements the protective action of the State and of the Social Security System.

It is now necessary to configure a further development of the country's social services to extend and complement the protective action of this system, strengthening the progress of the model of social State that is consecrated in the Spanish Constitution, strengthening the commitment of all of the public powers in promoting and providing the

necessary resources for setting up a social services system that is of high quality, driven by the best public interests and fully universal. In this regard, the System of Care for Dependency is one of the fundamental instruments for improving the situation of social services in our country, responding to the need for care in situations of dependency and the promotion of personal autonomy, quality of life and equal opportunities.

3. This Act regulates the basic conditions for the promotion of personal autonomy and care for dependent persons by means of the creation of a System for Autonomy and Care for Dependency (SAAD), with the collaboration and participation of all of the Public Administrations.

The main aim of the System is to guarantee the basic conditions and predict the levels of protection to which this Act refers. To this end, it serves as a common ground for the collaboration and participation of the Public Administrations and to optimise the available public and private resources. Thus, it configures a subjective right that is based on the principles of universality, equality and accessibility, developing a comprehensive support model organised on three administrative levels for the citizen, who is acknowledged as a beneficiary that participates in the System.

In this regard, the State's exclusive competence for regulating the basic conditions that guarantee the equality of all Spaniards in the exercise of their rights and in compliance with their constitutional rights (article 149.1 SC), justifies the regulation by this Act of the basic conditions for the promotion of personal autonomy and care for dependent persons through the creation of a System for Autonomy and Care for Dependency with the collaboration and participation of all of the Public Administrations, and with full respect for the competences that the latter have assumed in the area of social assistance, on the basis of article 148.1.20 of the Constitution.

The Act establishes a minimum level of protection, which is defined and financially guaranteed by the General State Administration. Moreover, as a second level of protection, the Act contemplates a regime of cooperation and funding between the General State Administration and the Autonomous Communities, with conventions for the development and application of other benefits and services that are contemplated in the Act. Finally, the Autonomous Communities shall be able to develop an additional third level of protection for citizens, if they deem it to be opportune.

The very nature of the purpose of this Act requires the commitment and combined action of all of the public powers and institutions, which means that coordination and cooperation with the Autonomous Communities is a fundamental element. Therefore, the Act establishes a series of mechanisms for cooperation between the General State Administration and the Autonomous Communities, including the creation of the Territorial Council of the System for Autonomy and Care for Dependency. It shall be responsible for developing, by means of agreement between the administrations, the functions of agreeing on a framework of interadministrative cooperation, the intensity of the services in the catalogue, the conditions and amount of the financial benefits, the criteria for the participation of the beneficiaries in the cost of the services or the scale for assessing the situation of dependency, aspects which should allow for the System to be deployed at a later stage through the corresponding agreements with the Autonomous Communities.

Building on the framework of competences, the intention is therefore to develop an innovative, integrated model based on interadministrative cooperation and respect for competences.

Funding shall be determined by the number of dependent people and by the services and benefits foreseen in this Act, which means that it shall be stable, sufficient, sustained in time and guaranteed by the co-responsibility of the Public Administrations. In any case, the General State Administration shall guarantee funding to the Autonomous Communities for developing the minimum level of protection for the dependent

population that is described in this Act.

The System shall cater equally for all dependent citizens. The beneficiaries shall make a financial contribution to the funding of the services on a progressive basis according to their economic ability, considering the type of service that is provided and the cost of it.

The System shall guarantee the participation of the entities that represent the dependents persons and their families in its consultative bodies.

The participation of the beneficiaries in the system shall also be acknowledged, as well as the complementarity and compatibility between the different types of benefits, in the terms that are defined in the implementing rules.

4. The Act is structured in a preliminary title; a first title with five chapters; a second title with five chapters; a third title; sixteen additional provisions; two transitory provisions and nine final provisions.

Its preliminary title sets out the provisions that refer to the purpose of the Act and its guiding principles, the rights and duties of the dependent population and the holders of such rights.

Title I configures the System of Care for Dependency, the collaboration of all of the Public Administrations in the exercise of their competences, by means of the various levels of protection in which the benefits and services are organised on an administrative basis. The necessary cooperation between Administrations is materialised by the creation of a Territorial Council of the System, in which the Local Corporations may participate and the approval of a framework of inter-administrative cooperation to be developed by Conventions with each of the Autonomous Communities. Title I also enumerates the benefits of the System, the catalogue of services, the degrees of dependency, the basic criteria for assessment of dependency and the procedure for acknowledgement of entitlement to the benefits.

Title II regulates the measures for ensuring the quality and efficiency of the System, with quality plans and assessment systems and special attention to the training and qualification of professionals and carers. This same title also regulates the system of information on dependency, the Consultative Committee of the system in which the social actors shall participate and explains that the consultative bodies that have already been created, the State Council for Older Persons, the National Council for Disability and the State Council of Non-Governmental Social Work Organisations are given the status of consultative bodies.

Finally, Title III regulates the rules on infringements and sanctions linked to the basic conditions for guaranteeing the rights of dependent citizens.

The additional provisions introduce the necessary changes in the state regulations, derived from this Act. Thus, there are references to Social Security for non-professional carers, the Natural Persons' Income Tax Act, the regulations on disability, major invalidity and the need for third-party assistance, as well as an explanation of the modifications that are necessary for regulating private coverage for situations of dependency.

The first transitory provision regulates the State's financial participation in commissioning the System in a transitory period until the year 2015, in accordance with the schedule of the calendar of application of the Act that is contained in the first final provision.

PRELIMINARY TITLE

General Provisions

Article 1. Purpose of the Act.

1. The purpose of this Act is to regulate the basic conditions that shall guarantee equality in the exercise of the subjective citizen right to the promotion of personal autonomy and care for dependent persons, according to the terms laid down in legislation, by means of the creation of a System for Autonomy and Care for Dependency, with the collaboration and participation of all of the Public Administrations and the guarantee by the General State Administration of a minimum common content of rights for all citizens in any part of Spanish State territory.

2. The System for Autonomy and Care for Dependency shall respond to a coordinated, cooperative initiative by the General State Administration and the Autonomous Communities, which shall contemplate measures in all areas affecting the dependent persons, with the participation of Local Entities where applicable.

Article 2. Definitions.

For the purposes of this Act, the following terms shall be understood to have the following meanings:

1. Autonomy: the ability to control, face and make, on one's own initiative, personal decisions on how to live in accordance with one's own standards and preferences and to carry out basic activities of daily living.

2. Dependency: the permanent state in which persons that for reasons derived from age, illness or disability and linked to the lack or loss of physical, mental, intellectual or sensorial autonomy require the care of another person/other people or significant help in order to perform basic activities of daily living or, in the case of people with mental disabilities or illness, other support for personal autonomy.

3. Instrumental Activities of Daily Living (IADL): a person's most elementary tasks, which allow him/her to live with a minimum level of autonomy and independence, such as: personal care, basic domestic activities, essential mobility, being able to recognise people and objects, being able to know where one is and find one's way around, being able to understand and perform simple orders or tasks.

4. Need for support for personal autonomy: required by people that have intellectual or mental disability, in order that they may attain a satisfactory degree of personal autonomy in the community.

5. Non-professional care: care that is provided to the dependent persons in their homes, by members of their family or friends, not linked to a professional care system.

6. Professional care: care that is provided by a public institution or entity, either profit-seeking or not-for-profit, or a self-employed professional, the purposes of which include the provision of services to the dependent persons, either in their own homes or in a centre.

7. Personal assistance: service provided by a personal assistant that performs or collaborates with the dependent person's everyday tasks, with the aim of encouraging his/her independent living and promoting and reinforcing his/her personal autonomy.

8. Third sector: private organisations arising from citizen or social initiative, under various modalities that meet criteria of solidarity and general public interest and are not for profit, promoting the acknowledgement and exercise of social rights.

Article 3. Guiding Principles of the Act.

The guiding principles of this Act are as follows:

a) Public nature of the services provided by the System for Autonomy and Care for

Dependency.

b) Universality of access by all the dependent population, in conditions of effective equality and non-discrimination, according to the terms laid down in this Act.

c) Comprehensive, integrated care for dependent persons.

d) Transversality of policies on care for dependent persons.

e) Assessment of people's needs, according to equity criteria in order to guarantee actual equality.

f) Personalised care, paying special attention to the situation of those that require greater positive action as a consequence of suffering a higher degree of discrimination or less equal opportunities.

g) Implementation of adequate measures for prevention, rehabilitation and social and mental stimulation.

h) Promotion of the necessary conditions in order that the dependent persons may lead their lives with the highest possible degree of autonomy.

i) The dependent persons shall remain, wherever possible, in the setting in which they live.

j) Quality, sustainability and accessibility of the services of care for dependent persons.

k) Participation by the dependent population, and where applicable, by their families and the entities that represent them, according to the terms provided in this Act.

l) Collaboration between the social and healthcare services in providing the services to the users of the System for Autonomy and Care for Dependency that are laid down in this Act and in the appropriate regulations issued by the Autonomous Communities and those that apply to the Local Entities.

m) Participation of private initiative in the services and benefits for the promotion of the personal autonomy and care for dependency.

n) Participation of the third sector in the services and benefits for the promotion of personal autonomy and care for dependency.

ñ) Inter-administrative cooperation.

o) Integration of the benefits provided for in this Act in the social services networks of the Autonomous Communities, in the scope of the competences that they have undertaken, and the acknowledgement and guarantee that they shall be offered via public or subsidised private centres and services.

p) Inclusion of the gender perspective, taking into account the different needs of women and men.

q) The severely dependent persons shall be cared for on a preferential basis.

Article 4. Rights and duties of the dependent persons.

1. The dependent persons shall be entitled, regardless of where in Spanish State territory they reside, to access under equal conditions, to the benefits and services foreseen in this Act, according to the terms laid down in it.

2. Similarly, the dependent persons shall enjoy all of the rights that are set out in standing legislation, and especially the following:

a) To enjoy the fundamental human rights and liberties, with full respect for their dignity and intimacy.

b) To receive, in understandable and accessible terms, full, ongoing information regarding their dependency.

c) To be notified if the procedures that are applied to them may be used as part of an educational or research project, wheres the express prior consent in writing of the dependent person or his/her representative is necessary.

d) To respect for confidentiality in the gathering and processing of their data, in accordance with Organic Law 15/1999, of 13th December, on the Protection of

Personal Data.

- e) To participate in the formulation and application of the policies that affect their wellbeing, either on an individual basis or by means of association.
- f) To decide, when they are able, on the guardianship of his/her person and properties, in the event of loss of their self-governing ability.
- g) To decide freely on whether or not to enter a residential centre.
- h) To fully exercise their jurisdictional rights and in the event of involuntary internment, guaranteeing a contradictory process.
- i) To fully exercise their patrimonial rights.
- j) To initiate the administrative and jurisdictional actions to defend the right that is acknowledged by this Act in item 1 of this article. In the case of minors or people that have been legally incapacitated, those that exercise custody or are the legal representatives shall be legitimised to act on their behalf.
- k) To equal opportunities, non-discrimination and universal accessibility, in any of the spheres of implementation and application of this Act.
- l) Not to suffer discrimination for reasons of sexual orientation or identity.

3. The public powers shall adopt the necessary measures in order to promote and guarantee respect for the rights listed in the above paragraphs, without further limitations on the exercise of such rights than those that are directly derived from their lack of ability to act that is determined by the dependency.

4. The dependent persons and, where applicable, their family members or representatives, as well as the help centres, shall be obliged to supply all of the information and data that is requested of them by the competent Administrations, for the purposes of assessing the degree and level of dependency; to notify all of the forms of personalised care that they receive and to apply the financial benefits for the purposes for which they were granted; or to any other obligation foreseen in standing legislation.

The dependent persons and, where applicable, their family members or representatives shall not be obliged to provide information, data or documentation that is already in the possession of the Public Administration making the request or which, in accordance with standing legislation, the latter may obtain by its own means.

Article 5. Rights holders.

1. Spanish people that comply with the following requirements shall be entitled to the rights laid down in this Act:

- a) Those in a situation of dependency in any of the established degrees.
- b) The terms of the thirteenth additional provision shall apply in the case of minors under the age of three years.
- c) Those that reside in Spanish territory and have done so for five years, of which two must be immediately prior to the date on which the application is presented. For minors under the age of five years, the residence period must be complied with by the person that has guardianship and custody of the minor.

2. Those that despite having met the aforementioned requirements do not have Spanish nationality shall be governed by the terms of Organic Law 4/2000, of 11th January, on the rights and duties of foreigners in Spain and on their social integration, in the international treaties and conventions that are established with the country of origin. For minors that do not have Spanish nationality, the terms of the standing Legislation on Minors shall apply, both at State and Autonomous Community levels and in international treaties.

3. The Government may establish protection measures to benefit spaniards that do not reside in Spain.

4. Following agreement by the Territorial Council of the System for Autonomy and

Care for Dependency, the Government shall establish the conditions governing access to the System of Care for Dependency that shall apply to returned Spanish emigrants.

TITLE I

System for Autonomy and Care for Dependency

CHAPTER I

Configuration of System

Article 6. Purpose of the System.

1. The System for Autonomy and Care for Dependency guarantees the basic conditions and common content to which this Act refers; serves as a common ground for the collaboration and participation of the Public Administrations, in the exercise of their respective competences, on the subject of the promotion of personal autonomy and protection for dependent persons; optimises the public and private resources available and contributes to improving the living conditions of citizens.

2. The System is configured as a network for public use that integrates on a coordinated basis, both public and private centres and services.

3. The fact of integrating the centres and services referred to in this article in the System for Autonomy and Care for Dependency shall not bring about any alteration in the legal regime applicable to their ownership, administration, management or secondment to other bodies.

Article 7. Levels of protection in the System.

The protection for dependency by the System shall be provided pursuant to the terms that are laid down in this Act and according to the following levels:

1. The minimum level of protection established by the General State Administration, in application of article 9.

2. The level of protection that is agreed upon between the General State Administration and the Administration of each of the Autonomous Communities via the Conventions foreseen in article 10.

3. Any additional level of protection that may be established by each Autonomous Community.

Article 8. Territorial Council of the System for Autonomy and Care for Dependency.

1. The Territorial Council of the System for Autonomy and Care for Dependency has been created as an instrument of cooperation for articulating the System. The Council shall be formed by the Minister of Labour and Social Affairs and one representative from each of the Autonomous Communities, who shall be the member of the respective Government Council in charge of this area. A number of representatives from the various ministerial Departments shall also be on the council. The representatives from the Autonomous Communities shall be in the majority.

2. Without detriment to the competences of each of the participant Public Administrations as well as the functions that are expressly assigned to the Council by this Act, it is responsible for exercising the following competences:

- a) Agreeing on the framework of inter-administrative cooperation for implementing the Act, as foreseen in article 10.
- b) Establishing the criteria for determining the intensity of protection of the services foreseen in accordance with articles 10.3 and 15.
- c) Agreeing on the conditions and amount of the financial benefits foreseen in article 20 and in the first additional provision.
- d) Adopting the criteria for the beneficiary's participation in the cost of the services.
- e) Agreeing on the scale referred to in article 27, with the basic criteria of the assessment procedure and of the characteristics of the assessment bodies.
- f) Agreeing on joint plans, projects and programmes, where applicable.
- g) Adopting common criteria for action and assessment of the System.
- h) Facilitating the availability of common documents, data and statistics.
- i) Establishing the coordination mechanisms for the case of displaced dependent population.
- j) Informing on the state implementing rules on the subject of dependency and in particular, the rules foreseen in article 9.1.
- k) Serving as a common ground for cooperation, communication and information between the Public Administrations.

The Territorial Council of the System, when formed, shall agree on its rules regarding how it functions and Chairpersonship.

Article 9. Participation by the General State Administration.

1. The Government, following consultation with the Territorial Council of the System for Autonomy and Care for Dependency, shall determine the minimum level of protection that is guaranteed to each of the beneficiaries of the System, according to his/her degree and level of dependency, as a basic condition in guaranteeing the right to the promotion of personal autonomy and care for dependency.
2. Public funding of this level of protection shall be provided by the General State Administration, which shall on an annual basis stipulate the economic resources in the General State Budgets Act in accordance with the criteria established in article 32.

Article 10. Cooperation between the General State Administration and the Autonomous Communities.

1. Within the Territorial Council of the System for Autonomy and Care for Dependency, the General State Administration and the Autonomous Communities shall agree on the framework of interadministrative cooperation to be developed by means of the necessary Conventions between the General State Administration and each of the Autonomous Communities.
2. By means of the Conventions referred to in the previous item, the General State Administration and the Autonomous Communities shall agree on the objectives, means and resources for the application of the services and benefits described in Chapter II of this Title, increasing the minimum level of protection determined by the State in accordance with article 9.
3. In application of the terms of the previous item, the Territorial Council of the System for Autonomy and Care for Dependency shall establish the criteria for determining the intensity of protection of each of the services foreseen in the Catalogue and the compatibility and incompatibility between same, for approval by the Government by means of a Royal Decree.
4. The Conventions shall determine the funding that corresponds to each

Administration for this level of service, according to the terms established in article 32 and in the first transitory provision of this Act, as well as the terms and conditions for the review of such funding. Similarly, the Conventions shall include the State contributions that are derived from guaranteeing the level of protection defined in article 9.

Article 11. Participation of the Autonomous Communities in the System.

1. In the context of the System for Autonomy and Care for Dependency, the Autonomous Communities shall be responsible for the following functions, without detriment to the competences that have been assigned to them according to the Spanish Constitution, the Statutes of Autonomy and standing legislation:

- a) Planning, ordering, coordinating and managing, in the scope of their territories, the services for the promotion of personal autonomy and care for dependent persons.
- b) Managing, in their territorial scope, the services and resources that are necessary for assessing and caring for dependent persons.
- c) Establishing the socio-sanitary coordination procedures and creating, where applicable, the necessary coordination bodies in order to guarantee effective care.
- d) Creating and updating the Registry of Centres and Services, facilitating the necessary accreditation in order to guarantee compliance with the quality requirements and standards.
- e) Ensuring that the corresponding Individual Care Programmes are drawn up.
- f) Inspecting and, where applicable, applying sanctions for noncompliances regarding the quality requirements and standards of centres and services and regarding beneficiaries' rights.
- g) Carrying out regular evaluations on the functioning of the System in their respective territories.
- h) Providing the General State Administration with the necessary information for the application of the funding criteria foreseen in article 32.

2. In any case, the Autonomous Communities, in conformity with the terms of article 7, may define additional levels of protection to those determined by the General State Administration in application of article 9, funded by their own budgets, and to those that are agreed upon, where applicable, according to article 10, for which they may adopt the rules of access and entitlement that they deem to be appropriate.

Article 12. Participation of Local Entities.

1. Local Entities shall participate in the management of the services of care for dependent persons, in accordance with the regulations of their respective Autonomous Communities and within the scope of the competences assigned to them under standing legislation.

2. Local Entities may participate in the Territorial Council of the System for Autonomy and Care for Dependency in the form and according to the conditions stipulated by the Council itself.

CHAPTER II

Benefits and Catalogue of care services in the System for Autonomy and Care for Dependency

SECTION 1. BENEFITS OF THE SYSTEM

Article 13. Objectives of the dependency benefits.

Care for dependent persons and the promotion of their personal autonomy should be aimed at achieving a better quality of life and personal autonomy, in the context of effective equality of opportunities, in accordance with the following objectives:

- a) To facilitate an autonomous existence in the person's usual setting, for as long as he/she wishes and as long as this is possible.
- b) To provide decent treatment in all spheres of their personal, family and social life, facilitating their active incorporation into community life.

Article 14. Dependency care benefits.

1. Dependency care benefits may be either services or financial benefits and they shall be intended, on the one hand, for the promotion of personal autonomy and on the other, for catering for the needs of people that have difficulties in performing the basic activities of daily living.

2. The services in the Catalogue described in article 15 shall be of a priority nature and shall be provided via the public offering of the Social Services Network by the respective Autonomous Communities by means of duly accredited public or subsidised private centres or services.

3. If it is not possible to provide care by means of any of these services, the Conventions that are referred to in article 10 shall incorporate the linked financial benefit described in article 17. This benefit shall be intended to cover the expenses of the service foreseen in the Individual Care Programme referred to in article 29 and shall be provided by an entity or centre that has been accredited to care for dependency.

4. The beneficiary may on an exceptional basis receive a financial benefit in order to be cared for by non-professional carers, as long as the home meets adequate standards of inhabitability and co-existence and that this is stated in the beneficiary's Individual care Programme.

5. The dependent persons may receive a financial benefit for personal assistance according to the terms of article 19.

6. Priority in accessing the services shall be determined by the degree and level of dependency and, when there is a tie regarding the degree and level, by the applicant's economic ability. Until the services network is fully implemented, those dependent persons that cannot access the services due to the application of the aforementioned priority regime shall be entitled to the financial benefit foreseen in article 17 of this Act.

7. For the purposes of this Act, economic ability shall be determined in the form that is established in the regulations, at the proposal of the Territorial Council of the System for Autonomy and Care for Dependency, according to the applicant's income and estate. In considering the estate, the age of the beneficiary and the type of service being provided shall be taken into account.

Article 15. Catalogue of services.

1. The Catalogue of services includes the social services for the promotion of personal autonomy and care for dependency, according to the terms that are specified in this chapter:

(a) Services for the prevention of situations of dependency and for the promotion of personal autonomy.

(b) Personal Alert System.

(c) Home Help Service:

(I) Housekeeping tasks.

(II) Personal care.

d) Day and Night Centre Service:

(I) Day Centre for older persons.

(II) Day Centre for persons under the age of 65 years.

(III) Day Centre with specialised care.

(IV) Night Centre.

e) Residential Care Service:

(I) Residence for dependent older persons.

(II) Centre offering care for dependent persons, according to the various types of disability

2. The services listed in item one are regulated without detriment to the terms of article 14 of Act 16/2003, of 28th May, on the Cohesion and Quality of the National Healthcare System.

Article 16. Network of services in the System for Autonomy and Care for Dependency.

1. The benefits and services laid down in this Act are part of the Social Services Network of the respective Autonomous Communities in the scope of the competences that they have undertaken. The network of centres shall be formed by the public centres belonging to the Autonomous Communities, the Local Entities, the state reference centres for the promotion of personal autonomy and care and attention to situations of dependency, as well as duly accredited, subsidised private centres.

2. The Autonomous Communities shall establish the legal regime and the operating conditions for the subsidised private centres. Particular attention shall be paid to those that belong to the third sector in the process of incorporation into the network.

3. Unsubsidised private centres and services providing services to the dependent persons must be in possession of the appropriate accreditation from the Autonomous Community in question.

4. The public powers shall promote the voluntary collaboration of the public with the dependent persons, by means of participation in voluntary organisations and entities belonging to the third sector.

SECTION 2. FINANCIAL BENEFITS

Article 17. Financial benefit linked to service.

1. The financial benefit, which shall be received on a regular basis, shall only be granted when it is not possible to access a public or subsidised attention and care service, depending on the degree and level of dependency and on the beneficiary's economic status, in accordance with the terms of the convention held between the General State Administration and the Autonomous Community in question.

2. This personal financial benefit shall in any case be linked to the acquisition of a service.
3. The competent Public Administrations shall supervise, in any case, the purpose and use of these benefits to verify compliance with the purposes for which they were granted.

Article 18. Financial benefit for care in the family setting and support for non-professional carers.

1. On an exceptional basis, when the beneficiary is being cared for in the family setting and when the conditions laid down in article 14.4 are met, a financial benefit for family care shall be acknowledged.

2. Following agreement by the Territorial Council of the System for Autonomy and Care for Dependency, the conditions qualifying for this benefit shall be established, according to the degree and level acknowledged for the dependent person and his/her economic status.

3. The carer must comply with the rules on affiliation, registration and contribution to the Social Security that are laid down in the regulations.

4 The Territorial Council of the System for Autonomy and Care for Dependency shall promote initiatives to support non-professional carers, which shall include training and information programmes and measures to cater for rest periods.

Article 19. Financial benefit for personal assistance.

The purpose of the personal assistance financial benefit is to pro-mote the autonomy of the severely dependent persons. Its objective is to contribute to the hiring of a personal assistant, for a number of hours, in order to provide the beneficiary with access to education and employment, as well as a more autonomous life in the exercise of the basic activities of daily living. Following agreement by the Territorial Council of the System for Autonomy and Care for Dependency, the specific conditions for qualifying for this benefit shall be established.

Article 20. Amount of financial benefits.

The amount of the financial benefits regulated in the articles in this section shall be agreed upon by the Territorial Council of the System for Autonomy and Care for Dependency, for subsequent approval by the Government by means of a Royal Decree.

SECTION 3. SERVICES FOR THE PROMOTION OF PERSONAL AUTONOMY AND FOR ATTENTION AND CARE

Article 21. Prevention of situations of dependency.

The purpose of this service is to prevent the onset or aggravation of illnesses or disabilities and their side-effects, by means of the coordinated implementation by the social and healthcare services of initiatives to promote healthy living conditions, specific preventative and rehabilitation programmes aimed at older and disabled persons and to those that are affected by complex hospitalisation processes. With this purpose in mind, the Territorial Council of the System for Autonomy and Care for Dependency shall agree on minimum criteria, recommendations and conditions to be met by the Plans for the Prevention of Situations of Dependency drawn up by the Autonomous Communities, with special attention to the risks and actions for older persons.

Article 22. Personal Alert System

1. The Personal Alert System provides assistance to beneficiaries by means of the use of communication and information technologies, with the support of the necessary personnel resources, in immediate response to emergencies, danger, loneliness and isolation. This service may be independent or complementary to the home help service.

2. This service shall be provided to people that do not receive residential care services and whose Individual Care Programme thus states.

Article 23. Home Help Service.

The home help service is made up of a set of initiatives that are carried out in the home of the dependent person in order to cater for his/her everyday needs, provided by entities or companies that have been accredited for this function:

- a) Services related to attending to domestic or home needs: cleaning, washing, cooking or others.
- b) Services related to personal care, in performing the activities of daily living.

Article 24. Day and Night Centre Service.

1. The Day or Night Centre service offers comprehensive care during the day or night to the dependent person, with the objective of improving or maintaining the highest possible level of personal autonomy and supporting the families or carers. In particular, from a bio-psycho-social perspective, it covers the needs of counselling, prevention, rehabilitation, guidance for the promotion of autonomy, enablement or assistance and personal care.

2. The types of centres shall include Day Centres for persons under the age of 65 years, Day Centres for older persons, Day Centres that are specialised due to the specific nature of the care they provide and Night Centres, which shall be adapted to the peculiarities and ages of the dependent persons.

Article 25. Residential Care Service.

1. From a bio-psycho-social perspective, the residential care service offers ongoing personal and healthcare services.

2. This service shall be provided in the residential centres that are enabled for this purpose according to the type of dependency, degree of dependency and the intensity of care required by the person.

3. This service may be provided on a permanent basis, when the residential centre becomes the person's usual residence, or temporary, when the person avails of temporary stays for the purposes of convalescence, during holiday periods or at weekends or if the nonprofessional carers are ill or availing of a rest period.

4. The residential care service shall be provided by the Public Administrations in public and subsidised centres.

CHAPTER III

Dependency and assessment

Article 26. Degrees of dependency.

1. The situation of dependency shall be classified in the following degrees:

a) Degree I. Moderate dependency: when the person needs help in order to perform various basic activities of daily living, at least once a day or when the person needs intermittent or limited support for his/her personal autonomy.

b) Degree II. Severe dependency: when the person needs help in order to perform various basic activities of daily living two or three times a day, but he/she does not want the permanent support of a carer or when he/she needs extensive support for his/her personal autonomy.

c) Degree III. Major dependency: when the person needs help in order to perform various basic activities of daily living several times a day or, due to his/her total loss of physical, mental, intellectual or sensorial autonomy, he/she needs the indispensable and continuous support of another person or when he/she needs generalised support for his/her personal autonomy.

2. Each of the degrees of dependency established in the previous paragraph shall be classified in two levels, depending on the person's autonomy and on the intensity of care that is required.

3. The intervals for determining the degrees and levels shall be established in the scale that is referred to in the following article.

Article 27. Assessment of the situation of dependency.

1. The Autonomous Communities shall determine the bodies for assessing the situation of dependency, which shall issue a report on the degree and level of dependency, specifying the care that the person may require. The Territorial Council shall agree on common criteria for the composition and action of the assessment bodies in the Autonomous Communities, which shall in any case be public.

2. The degree and levels of dependency, for the purposes of assessment, shall be determined by means of the application of the scale that is agreed upon in the Territorial Council of the System for Autonomy and Care for Dependency for subsequent approval by the Government by means of a Royal Decree. This scale shall include in its references the International Classification of Functioning, Disability and Health (ICF) adopted by the World Health Organisation.

3. The scale shall establish the objective criteria for assessing a person's degree of autonomy, his/her capacity to perform the various activities of daily living, the intervals in assessment for each of the degrees and levels of dependency and the protocol with the procedures and techniques to be performed in order to assess the aptitudes that are observed, where applicable.

4. The scale shall assess the person's ability to perform by him/herself the basic activities of daily living, as well as the need for support and supervision in performing such activities by people that have intellectual disabilities or mental illness.

5. The assessment shall take into account the appropriate reports on the person's health and on the setting in which he/she lives and consider, where applicable, the technical aids, orthoses and prostheses that have been prescribed for him/her.

CHAPTER IV

Acknowledgement of entitlement

Article 28. Procedure for the acknowledgement of the situation of dependency and of entitlement to the benefits of the System.

1. The procedure shall commence at the request of the person that may be affected by a certain degree of dependency or by the person representing the latter, and the processing of the application shall be according to the provisions laid down in Act 30/1992, of 26th November, on the Legal Regime of the Public Administrations and on the Common Administrative Procedure, with the specific particularities that are derived from this Act.

2. Acknowledgement of the situation of dependency shall be by means of a decision issued by the Autonomous Administration that corresponds to the applicant's residence and shall be valid throughout State territory.

3. The decision that is referred to in the previous item shall determine the services or benefits to which the applicant is entitled, according to the degree and level of dependency.

4. In the event of a change of residence, the Autonomous Community of destination shall determine, on the basis of its network of services and benefits, those to which the dependent person is entitled.

5. The basic criteria in the procedure for the acknowledgement of the situation of dependency and the common characteristics of the body and professionals that perform the acknowledgment shall be agreed upon by the Territorial Council of the System for Autonomy and Care for Dependency.

6. The services of assessment of the situation of dependency, the prescription of services and benefits and the management of the financial benefits foreseen in this Act shall be performed directly by the Public Administrations and may not be the object of delegation, hiring or subsidising private entities.

Article 29. Individual Care Programme.

1. In the context of the procedure for acknowledging the situation of dependency and the applicable benefits, the relevant social services in the public system shall establish an Individual Care Programme in which the modes of intervention that are most suitable to their needs from among the services and financial benefits foreseen in the decision for the appropriate degree and level shall be determined, with the participation, following consultation and where applicable, choice between the alternatives proposed to the beneficiary and where applicable, his/her family or the guardians representing him/her.

2. The individual care programme shall be reviewed:

- a) At the request of the interested party and of his/her legal representatives.
- b) On an official basis, in the form and at the intervals foreseen in the regulations issued by the Autonomous Communities.
- c) On the occasion of a change of residence to another Autonomous Community.

Article 30. Review of the degree or level of dependency and of the benefit that has been acknowledged.

1. The degree or level of dependency may be reviewed at the request of the interested party, his/her representatives or on an official basis by the competent Public Administrations, for any of the following reasons:

- a) Improvement or worsening of the situation of dependency.

b) Error in diagnosis or in the application of the corresponding scale.

2. The benefits may be altered or extinguished according to the beneficiary's personal situation, when there is a variation in any of the requirements set for acknowledgement, or in the event of non-compliance with the duties stated in this Act.

Article 31. Benefits of a similar nature and purpose.

If any other benefit of a similar nature and purpose established in the public social protection regimes is received, it shall be deducted from the financial benefits foreseen in this Act. In particular, the following shall be deducted: the major disability complementary benefit regulated in article 139.4 of the General Social Security Act, Reworded Text approved by Royal Legislative Decree 1/1994, of 20th June, the economic allocation for each dependent son/daughter over the age of 18 years with a degree of handicap that is equal to or higher than 75 per cent, the benefit of the need for another person in the non-contributory invalidity pension and the third-person subsidy in Act 13/1982, of 7th April, on the Social Integration of the Handicapped (LISMI).

CHAPTER V

Funding of the System and contribution by beneficiaries

Article 32. Funding of the System by Public Administrations.

1. The funding of the System shall be sufficient in order to guarantee compliance with the duties that correspond to the competent Public Administrations and shall be determined on an annual basis in the corresponding Budgets.

2. The General State Administration shall take full responsibility for the cost derived from the terms of article 9.

3. In the context of the inter-administrative cooperation foreseen in article 10, the Conventions that are entered into between the General State Administration and each of the administrations of the Autonomous Communities shall determine the obligations undertaken by each of the parties for funding the services and benefits in the System. These Conventions, which may be annual or pluriannual in nature, shall include distribution criteria considering factors such as the dependent population, geographical dispersion, insularity, returned emigrants and other factors and shall be liable for review by the parties.

The contribution of the Autonomous Community shall for each year be at least equal to that of the General State Administration as a consequence of the terms of this and the previous item.

Article 33. Participation by beneficiaries in the cost of the benefits.

1. The beneficiaries of the dependency benefits shall participate in the funding of the latter, according to the type and cost of the service and to their personal economic ability.

2. The beneficiary's economic ability shall also be taken into account in determining the amount of the financial benefits.

3. The Territorial Council of the System for Autonomy and Care for Dependency shall decide on the criteria for the application of the terms of this article, which shall be implemented in the Conventions referred to in article 10.

In order to decide on the beneficiary's participation, the differentiation between services of assistance and maintenance and hotel services shall be taken into account.

4. No citizen shall be left out of the System for failing to have economic resources.

TITLE II

Quality and efficacy of the System for Autonomy and Care for Dependency

CHAPTER I

Measures for guaranteeing the quality of the System

Article 34. Quality in the System for Autonomy and Care for Dependency.

1. The System for Autonomy and Care for Dependency shall foster the quality of care for dependency in order to ensure the efficacy of the benefits and services.

2. Without detriment to the competences of each of the Autonomous Communities and of the General State Administration, common criteria for accrediting the centres and quality plans of the System for Autonomy and Care for Dependency shall be established, within the general context of quality of the General State Administration.

3. Moreover, without detriment to the competences of the Autonomous Communities and of the General State Administration, the Territorial Council shall agree on the following:

- a) Criteria of quality and safety for centres and services.
- b) Quality indicators for assessment, continuous improvement and compared analysis of the centres and services in the System.
- c) Best practices guides.
- d) Service charters, adapted to the specific conditions of the dependent persons, in accordance with the principles of nondiscrimination and accessibility.

Article 35. Quality in the provision of services.

1. Essential quality standards shall be established for each of the services that are included in the Catalogue regulated in this Act, following agreement by the Territorial Council of the System for Autonomy and Care for Dependency.

2. Residential centres for dependent persons shall have to have internal regulations governing organisation and functioning, including a quality management system and establishing the participation of users in the form that is determined by the competent Administration.

3. Specific attention shall be paid to quality in employment and to promoting professionalism and reinforcing training in entities that aspire to managing benefits or services that are part of the System for Autonomy and Care for Dependency.

CHAPTER II

Training in the area of dependency

Article 36. Training and qualification of professionals and carers.

1. Basic and ongoing training shall be provided to the professionals and carers that attend to the dependent persons. In this regard, the public powers shall determine the professional qualifications that are required for the exercise of the functions that correspond to the Catalogue of services regulated in article 15.

2. The public powers shall promote the training programmes and initiatives that

are necessary in order to deploy the services that are established by the Act.

3. With the objective of guaranteeing the quality of the System, collaboration between the various competent Public Administrations on issues of education, healthcare, employment and social affairs shall be encouraged, as well as collaboration between the latter and universities, scientific societies and professional and trade union organisations, employers' associations and the third sector.

CHAPTER III

Information system

Article 37. Information system of the System for Autonomy and Care for Dependency.

1. The Ministry of Labour and Social Affairs, via the competent body, shall establish an information system in the System for Autonomy and Care for Dependency that shall guarantee the availability of information and reciprocal communication between the Public Administrations, as well as compatibility and articulation between the various systems. In this regard, the Territorial Council of the System for Autonomy and Care for Dependency shall agree upon the objectives and contents of the information.

2. The system shall contain information on the Catalogue of services and shall encompass, as essential data, details referring to the protected population, human resources, network infrastructure, results obtained and quality in the provision of the services.

3. The information system shall specifically contemplate the drawing up of statistics for state purposes on the subject of dependency, as well as supracommunity general interest statistics and those that are derived from commitments with supranational and international organisations.

Article 38. Communications network.

1. The Ministry of Labour and Social Affairs, by means of the preferential use of the common infrastructure of the communications and telematic services in the Public Administrations, shall place at the disposal of the System for Autonomy and Care for Dependency a communications network that shall facilitate and provide guarantees regarding the protection of the exchange of information between its members.

2. The use and transmission of the information in this network shall remain subject to compliance with the terms of Organic Law 15/1999, of 13th December, on the Protection of Personal Data, and to the requirements regarding electronic certification, electronic signature and ciphering, in accordance with standing legislation.

3. The aforementioned network shall be used to exchange information on the infrastructure in the System, the situation, degree and level of dependency of the beneficiaries of the benefits, as well as any other derived from the need for information in the System for Autonomy and Care for Dependency.

CHAPTER IV

Combating fraud

Article 39. Administrative action against fraud.

The Public Administrations shall vouch for the correct application of the public funds allocated to the System for Autonomy and Care for Dependency, avoiding unlawful

obtainment or enjoyment of its services or other benefits or economic grants that may be received by the individuals participating in the System or who are the beneficiaries of the latter. They shall also establish control measures intended to detect and persecute these situations.

For these purposes, the Public Administrations shall verify compliance with this Act and shall exercise its sanctioning powers according to the terms of Title III of same, availing, where applicable, of the inter-administrative cooperation formulae contained in this Act.

CHAPTER V

Consultative bodies in the System for Autonomy and Care for Dependency

Article 40. Consultative Committee.

1. The Consultative Committee of the System for Autonomy and Care for Dependency is created as an advisory body that is seconded to the Ministry of Labour and Social Affairs, which makes social participation in the System effective on a permanent basis and exercises the institutional participation of the trade union and employers' organisations in same.

2. Its functions shall be to inform, advise and formulate proposals regarding materials that are of special interest for the functioning of the said System.

3. The Committee shall be a tripartite composition, as it shall be formed by the Public Administrations, the employers' and trade union organisations and shall be a joint committee between the Public Administrations on the one hand and the trade union and employers' organisations on the other, according to the terms laid down in the following item. The Committee's agreements shall be adopted by a majority of the votes issued in each of the parties and therefore the majority of the votes from the Public Administrations and the majority of the votes from the trade union and employers' associations shall be required.

4. The Consultative Committee shall be chaired by the representative from the General State Administration that is appointed by the Minister of Labour and Social Affairs. Its functioning shall be regulated by its internal regulations. It shall be formed by the following members, who shall be appointed according to the terms that are established in the regulations:

- a) Six representatives from the General State Administration.
- b) Six representatives from the administrations of the Autonomous Communities.
- c) Six representatives from the Local Entities.
- d) Nine representatives from the most representative employers' organisations.
- e) Nine representatives from the most representative trade union organisations.

Article 41. Consultative bodies.

1. The following shall be consultative bodies with institutional participation in the System for Autonomy and Care for Dependency:

- The Consultative Committee of the System for Autonomy and Care for Dependency.
- The State Council for Older Persons.
- The National Council for the Persons with Disabilities.
- The State Council of Non-Governmental Social Work Organisations.

2. The functions of these bodies shall be to inform, advise and formulate proposals

on issues that are of special interest for the functioning of the System.

TITLE III

Infringements and sanctions

Article 42. Responsible parties.

1. Only the natural or legal persons that are responsible for actions that constitute an administrative infringement may be sanctioned for such actions.

2. Those that carry out such actions by themselves, in association with others or through an intermediary person shall be considered to be the authors of the infringements that are typified by this Act.

3. Those that cooperate in the execution of such infringements by means of an action or omission without which the infringement could not have been committed shall also be considered to be authors.

Article 43. Infringements.

The following shall constitute infringements:

a) Hindering or impeding the exercise of any of the rights acknowledged in this Act.

b) Obstructing the action of the inspection services.

c) Refusing to provide information or providing false data.

d) Applying the financial benefits to purposes other than those for which they are granted and receiving financial aid or aid in kind that is incompatible with the benefits established in this Act.

e) Failing to comply with the regulations regarding opening and operation permits and the accreditation of centres that provide care for dependent persons.

f) Treating the dependent persons in a discriminatory manner.

g) Violating the dignity of the dependent persons.

h) Causing harm or situations of risk to physical or psychological integrity.

i) Failing to comply with the specific requirements that are formulated by the competent Public Administrations.

Article 44. Classification of infringements.

1. Infringements shall be classified as minor, serious and very serious, in accordance with the criteria of risk to health, seriousness of the social alteration produced by the events, the amount of the benefit obtained, the intentionality, the number of people affected and recidivism.

2. Infringements typified in accordance with article 43 shall be classified as minor when they have been committed due to imprudence or simple negligence and do not constitute direct harm for the dependent people.

3. Infringements typified in accordance with article 43 shall be classified as serious when they involve harm to persons or when they have been committed with deceit or serious negligence. Infringements involving any of the following circumstances shall also be considered as serious:

a) Recidivism of minor offence.

b) Absolute refusal to provide information or collaborate with the inspection services, and misrepresentation of the information provided to the Administration.

c) Duress, threats, reprisal or any form of pressure exercised on the dependent persons or their families.

4. Infringements defined as serious shall be classified as very serious if any of the following circumstances are present:

- a) If they constitute a serious attack on the person's fundamental rights.
- b) If a serious loss is generated for the dependent population or for the Administration.
- c) If they involve recidivism of a serious offence.

5. Recidivism occurs in the case where when the infringement is committed, the individual has already been sanctioned for this same offence or for another of the same or greater degree of seriousness or for two or more less serious infringements in the last two years.

Article 45. Sanctions.

1. Infringements of this Act shall be sanctioned by the competent administrations with the loss of the benefits and subsidies for the beneficiaries; a fine for non-professional carers; and a fine and where applicable, loss of subsidies, temporary cease of activity or closure of the establishment, premises or company for the companies providing the services. In any case, the sanction shall require that all amounts unlawfully received be returned.

2. The graduation of the sanctions shall be proportionate to the infringement committed and shall be established and weighted according to the following criteria:

- a) Seriousness of the infringement.
- b) Seriousness of the social alteration and damage caused.
- c) Risk to health. d) Number of affected parties.
- d) Benefit obtained.
- e) Degree of intentionality and reiteration.

3. The graduation of the fines shall be as follows:

a) For minor infringements, a fine of up to 300 euros for the carers and up to thirty thousand euros for the service providers.

b) For serious infringements, a fine of between three hundred and three thousand euros for the carers; and of between thirty thousand and one euro and ninety thousand euros for the service providers.

c) For very serious infringements, a fine of between three thousand and one and six thousand euros for the carers; and of between ninety thousand and one euro and one million euros for the service providers.

4 In such cases where it is agreed to suspend the benefits or subsidies, the suspension shall be graded between one and six months depending on the seriousness of the infringement.

5 Moreover, in especially serious cases —recidivism of infringement or notorious, serious transcendence— very serious infringements shall be sanctioned with the temporary suspension of activity for a maximum of five years or, where applicable, with the closure of the company or of the service or establishment.

6 During the process of obtaining evidence in the sanction proceeding, the competent Administration may agree, as an interim measure, to suspend all forms of

grants or financial subsidies that the private individual or infringing entity has obtained or applied for from the said Public Administration.

7 During the process of obtaining evidence in the proceeding for serious or very serious infringements and given the possibility of losses that would be difficult or impossible to repair occurring, the competent Administration may agree, as an interim measure, to close the centre or suspend its activity.

Article 46. Period of Statutory Limitation.

1 The infringements that are referred to in this Act shall expire:

- a) After one year, in the case of minor infringements.
- b) After three years, in the case of serious infringements.
- c) After four years, in the case of very serious infringements.

2. The period of statutory limitation shall start to be counted from the day on which the infringement has been committed and it shall be interrupted by the initiation of the sanctioning proceeding, with the knowledge of the interested party.

3 Sanctions that are imposed for very serious offences shall expire after five years, for serious offences after four years and for minor offences after one year.

Article 47. Competences.

1 The Autonomous Communities shall implement the table of infringements and sanctions foreseen in this Act.

2 The initiation and filing of the infringement proceeding and the imposition of the corresponding sanctions shall be the responsibility of each Public Administration in the scope of its respective competences.

3 In the scope of the General State Administration, the following bodies shall be competent in imposing the sanctions for conduct foreseen as infringements in article 43:

- a) The Director General of the General Directorate of the Institute for Older Persons and Social Services, in the case of sanctions for minor infringements.
- b) The Secretary of State of the State Secretariat of Social Services, Families and Disability, in the case of sanctions for serious infringements.
- c) The Minister of Labour and Social Affairs, in the case of sanctions for very serious infringements. However, the prior consent of the Cabinet of Ministers shall be required when the sanctions are for an amount in excess of 300,000 euros or in cases in which the company is to be closed or the service or establishment is to be shut down.

First additional provision. Funding of the benefits and services guaranteed by the General State Administration.

The General State Budgets Act of each financial year shall determine the amount and the method of payment to the Autonomous Communities of the amounts that are necessary for funding the services and benefits foreseen in article 9 of this Act.

Second additional provision. Regime applicable to the Charter and Convention systems.

The funding of the services and benefits of the System in the Autonomous Community of the Basque Country and in the Statutory Community of Navarre, according to the terms of article 32 of this Act, corresponding to the expenditure budget of the General State Administration, shall be taken into account in calculating the Basque quota and the contribution to be made by Navarre, in conformity with the Financial Charter signed between the State and the Community of the Basque Country and with the

Financial Convention signed between the State and the Statutory Community of Navarre, respectively.

Third additional provision. Financial grants for facilitating personal autonomy.

The General State Administration and the administrations of the Autonomous Communities may, in accordance with their budgetary possibilities, establish specific agreements for granting financial grants with the purpose of facilitating personal autonomy. These grants shall be classified as subsidies and shall be intended for the following purposes:

a) Supporting the person with the necessary technical aids or instruments to aid him/her in normal daily living.

b) Providing accessibility and adaptations in the home that shall contribute to improve his/her ability to move around the home.

Fourth additional provision. Social Security for nonprofessional carers.

The Government shall determine in regulations the inclusion in the Social Security system of non-professional carers in the appropriate regime, as well as the requirements and procedure for affiliation, registration and contribution.

Fifth additional provision. Registry of Public Social Benefits.

The financial benefit linked to the service, the financial benefit for care in the family setting and the financial benefit for personalised assistance, which are regulated in this Act, shall be integrated in the Registry of Public Social Benefits. In this regard, the entities and bodies that manage these benefits shall be obliged to provide the data that is specified in the implementing rules of this Act for all benefits that are granted.

Sixth additional provision. Modification of Royal Legislative Decree 3/2004, of 5th March, which passes the reworded text of the Natural Persons' Income Tax Act.

A new item is added to article 7 of the reworded text of the Natural Persons' Income Tax Act, passed by Royal Legislative Decree 3/2004, of 5th March, with the following text:

«v) *Public financial benefits linked to the service for care in the family setting and personalised assistance that are derived from the Act for the Promotion of Personal Autonomy and Care for Dependent Persons.*»

Seventh additional provision. Private instruments for providing coverage for dependency.

1 The Government shall, within the timeframe of six months, pro-mote the necessary legislative modifications in order to regulate private coverage of situations of dependency.

2 With the purpose of facilitating co-funding by the beneficiaries of the services that are described in this Act, the regulation of the fiscal treatment applicable to private instruments for providing coverage to dependency shall be promoted.

Eighth additional provision. Terminology.

References to «the handicapped» and to «handicapped people» in the regulatory texts shall be understood to mean «persons with disabilities».

After the entry into force of this Act, the regulatory provisions drawn up by the Public Administrations shall use the terms «disabled person» or «persons with disabilities» to refer to them.

Ninth additional provision. Effectiveness of acknowledgement of the situations of major invalidity and of the need for third-party assistance.

Those who have been acknowledged the major invalidity pension or the need for third-party assistance according to Royal Decree 1971/1999, of 23rd December, on the Procedure for the acknowledgement, declaration and classification of the degree of handicap, shall be acknowledged the requirement of being in a situation of dependency, in the degree and level that are described in the implementing rules of this Act.

Tenth additional provision. Research and development.

1 The public powers shall promote innovation in all aspects related to the quality of life and care of the dependent population. In this regard, they shall promote research in areas related to dependency in their R+D+I plans.

2 The Public Administrations shall provide and support the development of technical regulations, in order to ensure non-discrimination in processes, design and development of technologies, products and services, in collaboration with the standardisation organisations and all participating actors.

Eleventh additional provision. Cities of Ceuta and Melilla.

The Ministry of Labour and Social Affairs shall enter into agreements with the Cities of Ceuta and Melilla on centres and services of care for dependency in both Cities, which shall be allowed to participate on the Territorial Council of the System in the manner that is decided by the latter.

Twelfth additional provision. Statutory Councils, Town Councils and Island Councils.

As regards the participation of the territorial entities in the System for Autonomy and Care for Dependency, the specific powers acknowledged to the Statutory Councils (Diputaciones Forales) in the case of the Autonomous Community of the Basque Country, the Island Councils (Cabildos) in the case of the Autonomous Community of the Canary Islands and the Insular Councils (Consejos Insulares) in the case of the Autonomous Community of the Balearic Islands shall be taken into account.

Thirteenth additional provision. Protection of minors under the age of three years.

1. Without detriment to the services that are established in the sectors of education and healthcare, the System for Autonomy and Care for Dependency shall cater for the needs of home help and, where applicable, linked financial benefits and care in the family setting for minors under the age of three years that have been accredited as being in a situation of dependency. The assessment instrument foreseen in article 27 of this Act shall include for this purpose a specific assessment scale.

2. In accordance with the terms of the previous item, care for minors under the age of three years shall be integrated in the various levels of protection established in article 7 of this Act and its funding.

3. The Territorial Council of the System for Autonomy and Care for Dependency shall promote the adoption of a comprehensive plan of care for these dependent minors under the age of three years, which shall contemplate the measures to be adopted by the Public Administrations, without detriment to their competences, in order to provide early care and rehabilitation of their physical, mental and intellectual abilities.

Fourteenth additional provision. Promoting employment for the persons with disabilities.

Private entities that aspire to provide on a subsidised basis benefits or services in the System for Autonomy and Care for Dependency must provide prior proof, if they are obliged to do so, of compliance with the reservation quota for the persons with disabilities or, failing the latter, with the exceptional measures established in article 38 of Act 13/1082, of 7th April, on the Social Integration of the Handicapped and regulated in Royal Decree 364/2005, of 8th April.

Fifteenth additional provision. Guarantee of accessibility and elimination of barriers.

The Public Administrations shall, in the scope of their respective competences, guarantee conditions of accessibility in the environments, processes and procedures of the System for Autonomy and Care for Dependency, according to the terms foreseen in the Act for Equal Opportunities, Non-Discrimination and Universal Accessibility for the Persons with Disabilities.

Sixteenth additional provision. Non-contributory pensions.

Item 2 of article 145 of the Reworded Text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, of 20th June, is hereby modified in the following terms:

The amounts that result from the terms of the previous item in this article, calculated on an annual basis, are compatible with the annual income or earnings available to each beneficiary, where applicable, as long as the latter do not exceed 25 percent of the annual amount of the non-contributory pension. Otherwise, the amount of the income or earnings that exceed this percentage shall be deducted from the amount of the non-contributory pension, with the exception of the terms of article 147.

First transitory provision. Public Administration participation in funding.

During the period that shall elapse between 1st January 2007 and 31st December 2015 and with the purpose of promoting the progressive implementation of the System, the General State Administration shall establish on an annual basis in its Budgets credits for entering into conventions with the administrations of the Autonomous Communities in accordance with article 10 of this Act.

Second transitory provision.

For a maximum period of six months after the starting date for the presentation of applications for acknowledgement of the situation of dependency, the terms of article 28.6 on delegation, hiring or subsidising shall remain suspended.

First final provision. Progressive application of the Act.

1. The effectiveness of the entitlement to the dependency benefits included in this Act shall be exercised on a progressive and gradual basis, in accordance with the following calendar, from 1st January 2007 onwards:

- In the first year, for those that are assessed as Degree III of Major Dependency, levels 2 and 1.
- In the second and third years, for those that are assessed as Degree II of Severe Dependency, level 2.
- In the third and fourth years, for those that are assessed as Degree II of Severe Dependency, level 1.
- In the fifth and sixth years, for those that are assessed as Degree I of Moderate

Dependency, level 2.

– In the seventh and eighth years, for those that are assessed as Degree I of Moderate Dependency, level 1.

2. Acknowledgement of the right contained in the decisions by the competent Public Administrations shall generate entitlement to access the corresponding services and benefits, foreseen in articles 17 to 25 of this Act, after the start of the year of implementation in accordance with the calendar stated in item 1 of this provision or from the time of application for acknowledgement by the interested party, if this is after the latter date.

3. After the first three years of progressive application of the Act have elapsed, the Territorial Council of the System for Autonomy and Care for Dependency shall assess the results of the latter and propose any changes that it deems to be necessary in the implementation of the System.

4. In assessing the results that are referred to in the previous article, a gender impact report on the implementation of the Act shall be drawn up.

Second final provision. Territorial Council of the System for Autonomy and Care for Dependency.

Within the maximum timeframe of three months after the entry into force of this Act, the Territorial Council of the System for Autonomy and Care for Dependency regulated in article 8 shall be formed.

Third final provision. Consultative Committee.

Within the maximum timeframe of three months after the entry into force of this Act, the Consultative Committee of the System for Autonomy and Care for Dependency regulated in article 40 shall be formed.

Fourth final provision. Framework of inter-administrative cooperation for implementation of the Act.

Within the maximum timeframe of three months after its being formed, the Territorial Council of the System shall agree on the framework of inter-administrative cooperation for implementation of the Act, as foreseen in article 10, as well as the calendar for implementing the terms contained in this Act.

Fifth final provision. Regulatory implementation.

Within the maximum timeframe of three months after the formation of the Council and in accordance with the corresponding agreements by the Territorial Council of the System, the intensity of protection of the services foreseen in accordance with articles 10.3 and 15 and the scale for assessing the degree and levels of dependency foreseen in articles 26 and 27 shall be approved.

Sixth final provision. Annual report.

1. The Government shall inform Parliament on an annual basis as to the enforcement of the terms contained in this Act.

2 This report shall include the memorandum by the Territorial Council and the decision by the Consultative Bodies.

Seventh final provision. Regulatory enablement.

The Government is authorised to issue any provisions that may be necessary for the implementation and enforcement of this Act.

Eighth final provision. Constitutional grounds.

This Act is issued under the auspices of the State's exclusive competence for regulating the basic conditions that guarantee the equality of all Spaniards in the exercise of their rights and in the compliance with their constitutional duties, according to article 149.1.1.^a of the Spanish Constitution.

Ninth final provision. Entry into force.

This Act shall come into force on the first day of the month following the month in which it is published in the «Official State Gazette».

Therefore, I order all Spaniards, individuals and authorities to obey and uphold this Act. Madrid, 14th December 2006.

KING JUAN CARLOS

THE PRESIDENT OF THE GOVERNMENT, JOSÉ LUIS RODRÍGUEZ ZAPATERO