

European Standards on Subsidizing Contraceptives

This factsheet offers an overview of European standards on the subsidization of contraceptives. First, it focuses on the guidance provided to Slovakia and other Member States by two regional bodies – the European Union and the Council of Europe. Second, it provides information on the approaches that numerous Member States of the European Union have taken to the subsidization of contraceptives.

I. REGIONAL HUMAN RIGHTS STANDARDS

1. European Union¹

European Parliament Resolution on Sexual and Reproductive Health and Rights

The European Parliament has emphasized that inequality in access to contraceptives according to income is an example of disparity in sexual and reproductive health and rights within the EU and within the Member States.² This approach was previously acknowledged by the Ministers of Gender Equality within the Member States which stated that women's full enjoyment of their sexual and reproductive health and rights is a prerequisite for achieving gender equality.³

The European Parliament makes the following recommendations to the governments of the Member States with regards to access to contraceptives:

- develop a national policy on sexual and reproductive health, in cooperation with diverse civil society organizations, providing comprehensive information concerning effective and responsible methods of family planning and ensuring equal access to all forms of high quality contraceptive methods;
- ensure that people living in poverty have better access to reproductive and sexual health services and, in particular, let them choose a method of contraception.⁴

Council Conclusions in European Union Health Systems

The Council of the European Union recognizes the importance of addressing health inequalities that may exist within and between Member States and invites the Member States to examine and tackle these inequalities in order to reduce the health gap and ensure equality of treatment and access to care.⁵

The overarching values of the European Union Health Systems, such as universality, equity, and solidarity, support also the need for ensuring effective access to contraceptives.⁶

Universality means that no one is denied access to health care.

Solidarity is closely linked to the financial arrangement of national health systems and the need to ensure accessibility to all.

Equity relates to equal access according to need, regardless of ethnicity, gender, age, social status or ability to pay.

2. Council of Europe

Parliamentary Assembly of Council of Europe (PACE)

Recently, PACE in a ground breaking resolution on the right to access abortion, recommended to Member States of the Council of Europe that they provide **contraception at a reasonable cost, reduce the number of unwanted pregnancies, and eliminate discriminatory effects of abortion restrictions on women who have limited access to information and few financial resources.**⁷

In 2004, PACE noted that access to affordable contraceptives needs to be included in Member States' strategies for sexual and reproductive health and in national health budgets.⁸

PACE Resolution 1607 (2008) Access to safe and legal abortion in Europe

7. The Assembly invites the member states of the Council of Europe to:

...7.5. adopt evidence-based appropriate sexual and reproductive health and rights strategies and policies, ensuring continued improvements and expansion of non-judgmental sex and relationships information and education, as well as contraceptive services, through increased investments from the national budgets into improving health systems, reproductive health supplies and information;

7.6. ensure that women and men have access to contraception and advice on contraception at a reasonable cost, of a suitable nature for them and chosen by them;

*European Social Charter and Revised Charter*⁹

State obligations under the European Social Charter's guarantees of the rights to health and to social, legal and economic protection of the family require States to ensure access to family planning services, including access to contraceptives (see below).¹⁰

The European Committee on Social Rights, which monitors state compliance with the Social Charter¹¹ has frequently held that the health care system must be accessible to everyone and that the right to access to health care implies that the state will bear some health care costs to reduce the financial burden on patients, specifically those most disadvantaged.¹²

The European Committee on Social Rights asked *Slovakia* to provide information on measures to promote information on family planning;¹³ recommended that *Italy* provide "recent information on the nature and frequency of periodic check-ups for women and children (screening, vaccination, dental care, etc.), sex education and family planning, as well as the funds devoted to these health areas";¹⁴ and saluted *Romania* for its plans to improve family planning in order to cut the number of unwanted pregnancies,¹⁵ as well as *Turkey* and *Portugal* for providing advice and contraception free of charge in family planning consultation units at all health centers and in obstetric and gynecological departments of all hospitals.¹⁶

II. COMPARATIVE LAW

1. Situation in the EU Member States

Member States that subsidize contraceptives fully or to some extent to all.	Member States that subsidize only some contraceptives or subsidize contraception for women under a certain age or for low income women
Belgium, ¹⁷ Denmark, ¹⁸ Estonia, ¹⁹ France, ²⁰ Greece, ²¹ Ireland, ²² the Netherlands, ²³ Portugal, ²⁴ Slovenia, ²⁵ Spain, ²⁶ United Kingdom ²⁷	Finland, ²⁸ Germany, ²⁹ Hungary, ³⁰ Italy, ³¹ Luxembourg, ³² Poland, ³³ Romania, ³⁴ Sweden ³⁵

2. Reasons for Subsidization of Contraceptives

Numerous EU Member States have subsidized contraceptives on the grounds of public health or to uphold fundamental rights. The human rights dimension of contraceptive subsidization was taken into account in Poland and in Slovenia. The Polish Ombudsman for Human Rights found the withdrawal of subsidies for contraceptives to be a discriminatory practice.³⁶ The Slovenian Government considers family planning to be a fundamental human right guaranteed by Article 55 of the Constitution, which grants all citizens the right to determine the number and spacing of their children.³⁷ The 1992 Health Services Act makes preventive health care for women a mandatory part of the primary health care system, and requires that all health care centers provide such services.³⁸

The Belgian Constitutional Court, in addressing the constitutionality of the law on pricing for pharmaceuticals, stated generally that that the policy behind the scheme is to improve access to drugs that promote public health and social benefits. The Court noted that contraceptives are a type of drug that must be accessible to the public at an affordable price. The Court further explained that providing access to contraceptives is justifiable on the grounds of public health and social protection in order to reduce the number of unwanted pregnancies.³⁹ Similarly, the Danish Government policy considers family planning services, including subsidization of contraception, "an integral part of the national health service."⁴⁰ In similar terms, the French Transparency Committee's research on the use of various oral contraceptives in France indicated that the provision of oral contraception "presents an interest in terms of public health."⁴¹

Also espousing the public health argument, as well as financial justifications, the Swedish Government considers contraceptive subsidies a means of avoiding the higher costs associated with unplanned pregnancies – both those related to health care for ‘babies’ carried to term and those associated with subsidized abortions, which are guaranteed in the Abortion Law (1974:595).⁴² The same reasoning was advanced in the UK. An amendment to the National Health Service Act that provided contraception for free was proposed to “cut down the number of unwanted pregnancies and...decrease the number of abortions.”⁴³

In conclusion, both European and comparative standards from the majority of the EU Member States support the subsidization of oral contraceptives on grounds of human rights and public health.

ENDNOTES

1 While admitting that the legal or regulatory policy concerning reproductive health falls within the Member States’ sphere of competence, the EU can play a supportive role through the exchange of best practices. See *European Parliament resolution on sexual and reproductive health and rights* (2001/2128 (INI)), point 1.

2 See *European Parliament resolution on sexual and reproductive health and rights* (2001/2128 (INI)), point D.

3 See *Ministerial Declaration of the Conference of Ministers of Gender Equality*, Luxembourg, February 4, 2005, available at http://ec.europa.eu/employment_social/events/2005/beijing_lux/ministerial_declaration_final_en.pdf (last visited Jun. 11, 2009).

4 See *European Parliament resolution on sexual and reproductive health and rights* (2001/2128 (INI)), points 2 and 5.

5 See *Council conclusions on women’s health* (2006/C 146/02), available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_146/c_14620060622en00040005.pdf (last visited Jun. 11, 2009).

6 See *Council Conclusions on Common values and principles in European Union Health Systems* (2006/C 146/01), p.2, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_146/c_14620060622en00010003.pdf (last visited Jun. 11, 2009).

7 See Parliamentary Assembly of the Council of Europe, *Resolution 1607 (2008) Access to safe and legal abortion in Europe*, available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1607.htm> (last visited Jun. 11, 2009).

8 See Parliamentary Assembly of the Council of Europe, *Resolution 1399 (2004) European strategy for the promotion of sexual and reproductive health and rights*, points 11.(i), (f), 11.(iv), and 12.(iv), available at <http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1399.htm> (last visited Jun. 11, 2009).

9 This regional treaty was ratified by Slovakia on 23 April

2009.

10 See European Social Charter (revised), CETS No.:163, signed by Slovakia on 18/11/1999, entered into force for Slovakia on 1/6/2009, Art.11 (the right to protection of health) and Art.16 (the right of the family to social, legal and economic protection).

11 The European Committee on Social Rights is the monitoring body of the European Social Charter (revised). The European Committee on Social Rights interprets the Charter through its jurisprudence and monitors the fulfillment of State parties’ obligations under the Charter.

12 See European Committee on Social Rights, Statement of Interpretation of Article 11, Conclusions I, p. 59; Addendum to Conclusions XV-2, Cyprus, pp. 26-28. See also European Committee on Social Rights, Conclusions to: XVII-2, Portugal, pp. 685-689; Albania 10/31/2007 c-2007-en1 /2007, Section 28/278.

13 See European Committee on Social Rights, Conclusions to Slovakia, 06/30/2004 c-16-2-en2 Section 178/238

14 European Committee on Social Rights, Conclusions to Italy for Report Covering 1/1/93 – 12/31/94

15 See European Committee on Social Rights, Conclusions to Romania, 09/03/2005 c-2005-en2 Section 84/140

16 See European Committee on Social Rights, Conclusions to: Portugal 05/30/2003 c-16-1-en2 Section 165/257; Turkey 30/05/2003 c-16-1-en2 Section 219/257

17 In Belgium, oral contraceptives are generally reimbursable at a rate of 20%. In order for a drug to be reimbursed at the time it is obtained from a pharmacy, it must be obtained using a prescription. However, an insured person may also seek reimbursement at a later date by application to her or his sickness fund. See Jaana Martikainen et al., *Drug reimbursement systems in EU Member States, Iceland and Norway, Helsinki: The Social Insurance Institution, Finland, Social Security and Health Reports* (2002), available at <http://www.kela.fi/in/internet/english.nsf/NET/050303125101PN?OpenDocument> (last visited Jun. 26, 2008).

18 In Denmark, there is a general reimbursement scheme for the total annual amount of expenses on medicines that is higher than certain amounts established by law. Expenses with contraceptives are included in the total amount as any other medicine. Contraceptives are available on prescription. See The Health Law (Denmark), No. 546 (Jun. 24, 2005), §144 et al., (Lovtidende, 2005, Part A, Jun., 25 2005, No. 92, 3914-3954). See also Danish Medicines Agency, Reimbursement rates 2008, available at <http://www.dkma.dk/1024/visUKLSArtikel.asp?artikelID=4235> (last visited Jul. 4, 2008) and Medicines Act, Act no. 1180 (Dec. 12, 2005) (amended by Act no. 538, Jun. 8, 2006 and Act no. 1557, Dec. 20, 2006), available at <http://lms-lw.lovportaler.dk/showdoc.aspx?docId=lov20051180uk-full> (last visited Jul. 4, 2008).

19 In Estonia, prescription contraceptives are generally subsidized by the Estonian government. Contraceptives receive a reimbursement rate of 75%, if taken: (i) within one year after childbirth, (ii) within three months after an abortion, or (iii) in the case of medical contraindication to childbirth. If a contraceptive on the list of medicines reimbursed at 75% is not used for these three reasons, the

contraceptive falls into the 50% reimbursement rate bracket. See Government of the Republic Regulation No.308 (RT I 2002, 79, 474) which entered into force on Oct. 1, 2002.

20 In France, medicines can be obtained from pharmacies upon presentation of a prescription. Many contraceptives in France are subsidized in accordance with France's system of drug reimbursement. Hormonal contraceptives are frequently subsidized at a rate of 65% and are included on the list of "important" medicines. See Report of the Transparency Commission on *Cycleane* (Jul. 10, 2002), available at <http://www.has-sante.fr/portail/upload/docs/application/pdf/ct021097.pdf> (last visited Jul. 4, 2008) and Report of the Transparency Commission on *Tetragynon* (May 30, 2001), available at <http://www.has-sante.fr/portail/upload/docs/application/pdf/ct010353.pdf> (last visited Jul. 4, 2008).

21 In Greece, women must pay 25% of the cost of prescription contraception. See Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Second and Third Periodic Reports of State Parties: Greece*, 2-3 and 6, U.N. Doc. CEDAW/C/GRC/2-3 (Nov. 11, 1996).

22 In Ireland, contraceptives can be obtained with a prescription, free of charge, when the allotted amount of 90 Euros per month for medicines is spent. See Citizens Information, Medical Cards, available at http://www.citizensinformation.ie/categories/health/entitlement-to-health-services/medical_card (last visited Jun. 2, 2008).

23 In the Netherlands, regardless of their age, insured individuals may obtain subsidized oral contraceptives under prescription free of charge or at a subsidized rate in accordance with the provisions of the *Basisverzekering*. See *Medicijnkosten, College voor Zorgverzekeringen*, available at <http://www.medicijnkosten.nl> (last visited Jun. 19, 2008).

24 Portuguese family planning schemes include the provision of oral contraceptives. Prescription methods of contraception are subsidized by the government and, therefore, free of charge to women 25 and older. For women below the ages of 25, these contraceptives are subsidized only for therapeutic reasons. See Health Department (*Portal Da Saude*), available at <http://www.portaldasaude.pt/Portal/> (last visited Jun. 25, 2008) and ASTRA Network, *Sterilization Laws and Government Funding for Family Planning Services in EU Countries* (2006), available at <http://www.astra.org.pl/sterilization.pdf> (last visited June 14, 2008); see also Population Division of the Department for Economic and Social Affairs of the United Nations Secretariat, *Abortion Policies: A Global Review* (1999), available at <http://www.un.org/esa/population/publications/abortion/doc/portugal.doc> (last visited Jun. 14, 2008).

25 The Slovenian public health insurance system placed contraceptives on a special list of medicines and diseases for which 100% subsidized coverage is given. See Klemen Ganziti, et al., *Compulsory Health Insurance in Slovenia: Today for Tomorrow* 30 (2007), available at <http://www.zzs.si/zzs/internet/zzseng.nsf> (last visited Jun. 21, 2008).

26 All methods of contraception, including oral contraceptives on prescription, are widely available at public health care facilities in Spain for a reduced price or free of

charge. See L. Iglesias, *Contraception in Spain*, *Advances in Contraception*, 363-67 (1993).

27 In UK, the National Health Service ("NHS") Reorganisation Act of 1973 made all contraception free of charge. Therefore, the NHS supplies prescribed contraceptives for free, with the exception of prescriptions obtained through NHS-Scotland, which cost £5 (€6.3) in the absence of an applicable exemption. See National Health Service Reorganisation Act, 1973, c. 32, § 445(4).

28 In Finland, persons under the age of 18 can obtain condoms for free from clinics. See Osmo Kontula and Elina Haavio-Mannila, *Finland, The International Encyclopedia of Sexuality, Volume I-IV* (Robert T. Francoeur, ed., 1997-2001), available at <http://www2.hu-berlin.de/sexology/IES/finland.html#9> (last visited Jul. 4, 2008).

29 In Germany, subsidies for prescription oral contraceptives are only applicable to insured individuals under twenty years old. Insured women under 20 years of age must pay a 10% co-payment for the price of each contraceptive drug that is more expensive than €5. The maximum amount of the co-payment is €10. See *Empfängnisverhütung* [SGB V] [Social Health Insurance Code], at § 24a(2). See also Bundesministerium für Gesundheit [German Federal Ministry for Health], *Neue Zuzahlungs- und Finanzierungsregelungen*, available at http://www.die-gesundheitsreform.de/gesundheitsystem/themen_az/tabellen/zuzahlung/index.html (last visited Jun. 23, 2008).

30 In Hungary, two contraceptive pills, *Anteovon* and *Rigevidon*, may be prescribed free of charge and reimbursed if the insured woman has a serious social or medical justification, which includes low-income women. See Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Combined Fourth and Fifth Periodic Reports of State Parties: Hungary*, 24, U.N. Doc. CEDAW/C/HUN/4-5 (Sep. 21, 2000).

31 In Italy, only the following oral contraceptives, *Etinilestradiolo*, *Levonorgest*, *Desogestrel*, and *Gestodene*, are subsidized, meaning that the user must pay a nominal co-payment. Yet, low-income families are exempted from this nominal co-payment. See Claudio Jommi, *Italy Pharmaceutical Pricing and Reimbursement*, available at <http://ec.europa.eu/enterprise/phabiocom/docs/tse/italy.pdf> (last visited Jun. 25, 2008). See also Ministry of Health [Ministero della salute], *Rimborsabilità*, available at <http://www.ministerosalute.it/medicinaliSostanze/paginaInternaMedicinaliSostanze.jsp?id=15&menu=assfarm> (last visited Jun. 25, 2008).

32 In Luxembourg, contraceptives are provided free-of-charge in family planning centers to young people and to those who cannot afford them. See Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Third Periodic Reports of State Parties: Luxembourg*, 80, U.N. Doc. CEDAW/C/LUX/3 (Mar. 30, 1998). See also European Observatory on Health Care Systems, *Health Care Systems in Transition: Luxembourg*, 24 (1999), available at <http://www.euro.who.int/>

document/e67498.pdf (last visited Jul. 1, 2008)

33 In Poland, only *Microgynon 21*, *Rigevidon* and *Stediril 30*, oral contraceptives which can be used for hormonal therapy, are subsidized at a rate of 70%. Contraceptives are available only on prescription. See 2007 Regulation (Nov. 2, 2007) on the List of Basic Drugs and the Supplementary Drugs and their Prices, Appendix 2, available at http://www.mz.gov.pl/wwwfiles/ma_struktura/docs/rozp_ref_1_07221651_1.pdf.

34 In Romania, the following contraceptives are subsidized at 100% of their cost: *Exluton* (oral contraception); *Mirena* (intrauterine); *Depo-Provera* (injection); *Megesteron* (3-month slow release contraceptive) and *Lutenyl* (R). There are also categories of women that are eligible to access contraceptives free of charge: students, unemployed women, social security recipients, residents of rural areas, women having recently received abortions, and any other woman who could prove that she qualified due to her low income. See Hotarare nr. 1841 (2006), Ordin 75 (2008) with the amendments of the medication list, Ministerul Sanatatii [Ministry of Health] and Order No. 654-519 of Sep. 26, 2001, *Ministerul Sanatatii si Familiei, Monitorul Oficial* [M.Of.] [Official Gazette of Romania], no. 675 Oct. 25, 2001. Order No. 1.041 of Dec. 24, 2002, *Ministerul Sanatatii si Familiei, Monitorul Oficial* [M.Of.] [Official Gazette of Romania], no. 148, Mar. 7, 2003, as amended in no. 266, Apr. 16, 2003. Order No. 248/149 of Mar. 21, 2003, *Ministerul Sanatatii si Familiei, Monitorul Oficial* [M.Of.] [Official Gazette of Romania], no. 242, Apr. 9, 2003. Order No. 10 of Jan. 12, 2005, *Ministerul Sanatatii si Familiei, Monitorul Oficial* [M.Of.] [Official Gazette of Romania], no. 61, Jan. 18, 2005.

35 All of the Counties in Sweden, with the exception of one, have supplemented the subsidies for birth control for younger women. These subsidies vary from county to county, both with regard to the age limit up to which women may qualify for these subsidies, and with regard to which birth control methods are subsidized and at what cost. See Betänkande 2000/01:SoU10 Hälso- och sjukvårdsfrågor m.m, available at http://www.riksdagen.se/webbnav/index.aspx?nid=3322&dok_id=GO01SoU10 (last visited Jun. 10, 2008).

36 See Center for Reproductive Rights, *Women of the World : Laws and Policies Affecting Their Reproductive Lives East Central Europe* (Poland) at 108-109.

37 See Constitution of the Republic of Slovenia, art. 55, available at <http://www.dz-rs.si/index.php?id=351&doid=25&showdoc=1> (last visited Jun. 21, 2008).

38 See Ministry of Labour, Family and Social Affairs of the Republic of Slovenia, Statement of the Republic of Slovenia to the Hague Forum, note 23 (February 8-12, 1999), available at <http://www.un.org/popin/icpd/icpd5/hague/slovenia.pdf> (last visited Jul. 4, 2008).

39 See *Merck, Sharp and Dohme BV v. Belgium* (le recours en annulation des articles 58, 65, 67, 68 et 69 de la loi du 27 avril 2005 relative à la maîtrise du budget des soins de santé et portant diverses dispositions en matière de santé, introduit par la société de droit néerlandais Merck Sharp & Dohme BV.), [Cour d'arbitrage], Arrêt n° 150/2006 du 11 octobre 2006 [hereinafter Merck]; see also Law of April 27, 2005 with respect to the control of the health case budget [loi due

27 avril 2005 relative à la maîtrise du budget des soins de santé], as printed in Moniteur Belge May 20, 2005(Belgium). See also Constitution of Belgium, available at <http://www.fed-parl.be/gwuk0002.htm>.

40 See Abortion Policy, Denmark, available at <http://www.un.org/esa/population/publications/abortion/doc/denmar1.doc> (last visited Jul. 4, 2008).

41 Report of the Transparency Commission on Cycleane (Jul. 10, 2002), available at <http://www.has-sante.fr/portail/upload/docs/application/pdf/ct021097.pdf> (last visited Jul. 4, 2008).

42 See Skillnader, i kostnader mellan olika typer av preventivmedel, Socialstyrelsen. Stockholm 2006, 36.

43 *Free Contraceptives in Great Britain*, J. of the Am. Med. Assn., 1402, 223(12) Mar. 19, 1973. *BV v. Belgium* (le recours en annulation des articles 58, 65, 67, 68 et 69 de la loi du 27 avril 2005 relative à la maîtrise du budget des soins de santé et portant diverses dispositions en matière de santé, introduit par la société de droit néerlandais Merck Sharp & Dohme BV.), [Cour d'arbitrage], Arrêt n° 150/2006 du 11 octobre 2006 [hereinafter Merck]; see also Law of April 27, 2005 with respect to the control of the health case budget [loi due 27 avril 2005 relative à la maîtrise du budget des soins de santé], as printed in Moniteur Belge May 20, 2005(Belgium). See also Constitution of Belgium, available at <http://www.fed-parl.be/gwuk0002.htm>.

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