**Letter to NHRIs – SR Disability - Questionnaire**

**Portuguese Ombudsman**

Portugal has an Ombudsman, national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999. It is an organ expressly provided for under Article 23 of the Constitution, with competence to receive “complaints against actions or omissions by the public authorities” and to address to the competent bodies “such recommendations as may be necessary in order to prevent or make good any injustices”

Under the Constitution and his Statute, the Portuguese Ombudsman's activity results primarily of complaints that are submitted to him/her by the citizens.

The Portuguese Ombudsman does not develop its activity directly before private individuals. In fact, as referred to in article 2 of the Statute of the Portuguese Ombudsman (Law 9/91, of 9th April), the activities of the Ombudsman shall focus namely on the activity of the services integrated in the central, regional and local public administration, the Armed Forces, the public institutes, the public companies or the companies whose capital is mostly public and the concessionaires operating public services or exploiting state property.

Within the scope of his activity, the Portuguese Ombudsman devotes special attention to persons with disabilities and to the protection and promotion of their rights.

At the office of the Portuguese Ombudsman there is the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) that takes into account the specific needs of these three particularly vulnerable groups of citizens. The N-CID aims to concentrate the work of the Ombudsman related to persons with disabilities rights.

Still, the Ombudsman office there is six different thematic units where they are processed complaints related to issues involving disability. It was therefore collected input from all of them and this text is the response of the Portuguese Ombudsman to the questionnaire.

Since 2011, the Portuguese Ombudsman maintains a toll-free telephone hotline entitled to receive complaints relating to Persons with Disabilities’ and to disseminate information to persons with disabilities about their rights and specific legal benefits on technical support, social support, health care, education and others, thereby contributing to a more inclusive and participatory society.

The Persons with Disabilities toll-free telephone hotline can be accessed either by landline or by mobile phone to the number 800 208 462 and runs every weekday from 9:30 to 17:30. There is a call recorder, which can be left messages, to which the line responds as soon as possible.

Until april 30, 2015, The Persons with Disabilities hotline received 1834 calls, and there has been an increase in the number of calls per month from the time of its opening.

The issues that raise more questions are related to legislation on citizens with disabilities, in particular its enforcement, to the degree of disability and the allocation of social benefits.

In 2012, the Portuguese Ombudsman has instructed a file concerning the investigation of the conditions of access to the entire network of the Lisbon Subway Stations for citizens with limited mobility and released the report “Accessibility conditions of Lisbon Subway".

**Persons with disabilities - Introductory note**

1. The status of persons with disabilities, whether of physical or mental nature, is enshrined in the 1976 Constitution of the Portuguese Republic[[1]](#footnote-1)-[[2]](#footnote-2) which entitles them to the same legal rights and obligations as all other citizens, except to those they are objectively unable to enjoy or meet, respectively.

On the other hand, the Constitution requires the State to undertake a national policy of prevention, rehabilitation and integration of persons with disabilities. It is also noteworthy that the national policies implemented in this regard are coordinated by a public institute, the National Institute for Rehabilitation.

1. Within the national legal framework it is considered a person with disability a person that “by loss or anomaly, congenital or acquired, of body functions or body structures, including the psychological functions, present particular difficulties which may, in conjunction with environmental factors, hinder or limit their full and effective participation on an equal basis with others”[[3]](#footnote-3).
2. Moreover, it is also worth mentioning that, in compliance with the principles contained in the UN Convention on the Rights of the Child and under the national Action Plan for the Integration of Persons with Disabilities or Incapacity 2006-2009, the National System of Early Childhood Intervention (SNIPI, in the Portuguese acronym) was established by Decree-Law 281/2009 of 6 October 2009[[4]](#footnote-4).

SNIPI is aimed at children up to 6 years of age, with changes or risk for changes in the body structures or functions, taking into account its normal development. SNIPI works through the coordinated action of the Ministries of Solidarity, Employment and Social Security, of Education and Science, and of Health, together with the involvement of families and the community. Its mission is to ensure Early Childhood Intervention, understood as a set of integrated support measures focused on the child and his or her family, including actions of preventive and rehabilitative nature, namely in the education, health and social action spheres.

In this context, whenever a problem that affects the development of a child is perceived, it is incumbent on the health services to detect, signalise and refer the child concerned to an Early Childhood Intervention process. This means that an individual plan is set for this child (the so-called Early Intervention Individual Plan), considering the respective needs, and to be drafted by a multidisciplinary team, encompassing all the services involved in the process (the so-called Intervention Local Teams).

**Social Protection**

**1.** Protection in the fields of disability is provided for in a social security framework law[[5]](#footnote-5) under the family protection subsystem of the social protection system of citizenship (regardless of insurance system), together with the family expenses. Specific legislation has not yet been adapted, and, in some cases, still depends on the protection situation of the applicants contributory.

1.1. Thus, the ***family protection subsystem*** covers the following specific benefits for persons with disabilities, in order to compensate additional costs arising from the existence of a situation of disability in the household:

* **Family allowance for children and young people with disabilities allowance,** summed to the family allowance for children and young people (the age limit is extended in case of persons with disabilities), for descendants of beneficiaries, people with disabilities, under the age of 24 years and that: attend or are admitted to specialized establishment or rehabilitation; require individualized support pedagogical and/or specific therapeutic; or does not exercise professional activity covered by compulsory social protection scheme;
* **Third person assistance allowance**, assigned to the holders of the family allowance for children and young people with disabilities allowance or monthly life allowance that rely on and have effective assistance from a third person to ensure their basic needs;
* **Allowance for special school attendance**, assigned to persons with disabilities under 24 years of age, descendants of benificiaries, who are in one of the following situatuions: need to attend a private school of special education or need individual expert support when the disability does not requeire a special school attendance;
* **Monthly lifelong allowance** (plus the extraordinary supplement of solidarity should the holders be over 70 years of age), for dependent descendants of beneficiaries, over 24 years, with physical, sensorial, organic, motor or mental disabilities, who cannot insure their livelihood through a professional activity.

1.2. Remaining protection is conferred at other level, under the parental social protection:

* **Benefit for the care of children with disabilities or chronically ill** - either mother or father can take the leave to provide urgent or indispensable assistance children with disabilities or chronically ill with whom they live, if one of them is employed and may not take the leave. It is granted for a maximum period of 6 months, extendable to 4 years.
* **Benefit for the care of grandchildren** - grandparents or equivalent are entitled to take a paid leave to provide urgent or indispensable assistance to a minor grandchild or a grandchild with disability or chronically ill, if the child’s parents or other equivalent family members are employed and may not take the leave.

1.3. At the same time, the Portuguese legislation also provides for the protection of the disabled under the ***social action subsystem***. At this level, there are four types of social responses for children and young persons with disabilities, namely: early intervention; support homes; transportation; holiday and leisure centers.

For older people and adults with disabilities the following social responses are also available: foster care; home assistance; occupational and animation support centers; residential care; transportation; holiday and leisure centers.

1.4. Futhermore, the ***Social Security System*** provides **incentives for the employment** of persons with disabilities. It applies to workers with disabilities under labour contract, provided that their working capacity is less than 80% of the capacity generally required for the performance of similar tasks (the total contribution rate is 22.9%, of which the employer pays 11.9% and the employee 11%).

**2.** In applying the rules on the protection on disability, and notwithstanding the various Ombudsman's interventions, there is a great disparity of criteria of services on verification of conditions of assignment of benefits, in part by the legislation in force not be clear and be inadequate and obsolete.

The Ombudsman has therefore intervened with the Social Security Institute (ISS) in the sense that entity promoting correction of wrong procedures of some of its services.

This happened following a complaint about the annual renewal requirement of proof of disability for assignment of the rebate of the family allowance for children and young people to permanently handicapped.

The Ombudsman addressed a remark to the ISS to adopt measures as a matter of urgency, to overcome the issue and ensure that the beneficiaries were not harmed or see interrupted its subsidies. This remark was accepted, having ceased to be required, by the services, the annual proof of disability whenever is attested that the disability is permanent and absolute[[6]](#footnote-6).

In other situation, the case of a beneficiary of family allowance for children and young people with disabilities allowance, to whom the provision was terminated by the services due to the fact they consider that allowance not cumulated with the special education allowance, the Ombudsman request to the same Institute the correct application of the law. In this case, ISS recognized the position defended by the Ombudsman and issued a technical guidance (16/08) that harmonized procedures in this matter[[7]](#footnote-7).

But relevant intervention of the Ombudsman in this subject has been the issue of the assignment of allowance for special school attendance.

In fact, over the past years, the Ombudsman has received a significant number of complaints concerning the allocation of the allowance for special school attendance. Those complaints reflect, on one hand, delays in the assessment of applications and the delay in payment of deferred benefits, and raise, in another hand, several issues concerning the appreciation of the applications as well as the grounds invoked for refusal decisions, in regard to the interpretation and application of law used by the departments concerned.

This situation has prompted to different interventions of the Ombudsman, culminating in the formulation of Recommendation No. 15-B/2012, addressed to the Secretary of State for Solidarity and Social Security and the Secretary of State for Education and School Administration, aiming the revision of the legal framework of the allowance for special school attendance (special education allowance).

The mentioned Recommendation was accepted, and the Secretary of State for Solidarity and Social Security informed the Ombudsman in August 2014, that intended to review and update the regulatory framework of the allowance for special school attendance (special education allowance). Presently, we still await the implementation of the announced legislative amendment.

**3.** The concept of disability and the respective attestation and verification will vary according to the performance.

**Education**

1. The 1976 Constitution of the Portuguese Republic guarantees, within the catalogue of fundamental rights, the freedom to learn and to teach (Article 43), as well as the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling (Articles 73 and 74).

In this context and as laid down by the Constitution, the State has the task to promote the democratisation of education and other conditions as well, so that education (through school and other formative means) may contribute namely to equal opportunities and the overcoming of economic, social and cultural inequalities, the development of the personality and the spirit of tolerance, mutual understanding, solidarity and responsibility, to social progress and to democratic participation in collective life (Article 73(2) of the Constitution).

Accordingly, in the implementation of the education policy, the State is charged, among other incumbencies, with that of promoting and supporting access of persons with disabilities to education as well as of supporting special education whenever necessary (Article 74(2-g), of the Constitution).

1. At the legislative level, the Education Act in force[[8]](#footnote-8) establishes the general framework or bases of the education system, asserting the special State responsibility to promote the democratisation of education, so as to ensure the right to a fair and effective equality of opportunities in access to and success in schooling. As for pre-school education is specifically concerned, one of its objectives, according to the Education Act (Article 5(1-h)), is to identify at this stage inadequacies and deficiencies, and, accordingly, to promote the best action and orientation of the child concerned; with regard to primary education, the Education Act (Article 7(j)) refers, among other objectives, that of ensuring to children with specific educational needs (namely due to physical and mental disabilities), appropriate conditions for their development and full use of their skills. Moreover, the Education Act (Articles 20 and 21) includes special education among existing special schooling education modalities, as foreseen by the law, defining its scope, objectives and organisation. In addition, regarding school buildings, the same Act (Article 42(4)) establishes that the special needs of persons with disabilities are to be taken into account in building design and selection of equipment. It should also be mentioned that following the 2009 amendment to the Education Act, compulsory education (which is free of any fees or charges related to enrolment, attendance and certification) was extended up to 18 years of age (corresponding to 12 school years).
2. In this legal framework, the State is then charged to promote the democratisation of education and to ensure that it effectively contributes to equal opportunities, overcoming inequalities and forbidding all forms of discriminatory education organisation.

In this context and also with relevance to the protection and promotion of the right of persons with disabilities to social protection, concrete measures have been adopted, with highlight to the realms of special education needs of children with disabilities as well as to school social action.

Indeed, as for students[[9]](#footnote-9) with special education needs, the existing system provides for inclusive education as the best guarantee of educational equity, the law recognising the right to the offer of the appropriate education responses, at all educational levels, to children with disabilities and other limitations[[10]](#footnote-10). Thus, schools (including private schools with parallel teaching regime) cannot reject acceptance or enrolment of any child based on their special education needs. Failure to comply with this principle of non-discrimination leads to legal consequences.

In order to benefit from special educational support, the children concerned should have significant limitations at the level of activity and participation in one or more areas of life, due to functional and structural changes, of permanent character, resulting in continued difficulties in communication, learning, mobility, autonomy, interpersonal relationship and social participation.

For each student with permanent special education needs an Individual Education Plan (PEI, in the Portuguese acronym) is elaborated, also with the participation of the parents, and that encompasses the special educational measures to be implemented, such as: personalised educational support, individual curricular adjustments, adjustments in school registration process, adjustments in the evaluation process, individual specific curriculum and support technologies (except for the individual curricular adjustments and the specific individual curriculum, these measures may be cumulative with each other).

In addition to the possibility of delaying, for one year, the registration in the first year of compulsory education, children with permanent special education needs may benefit from being part of a class with limited number of students.

Moreover, in order to assure that they can access the most appropriate educational responses to their specific situation, deaf students, blind and with low vision students, students with autistic spectrum disorders and students with multi-disability and congenital deaf-blindness benefit from organisational school adjustments, corresponding, respectively, to the following specific types of education: reference schools for the bilingual education of deaf students, reference schools for the education of blind and with low vision students, structured teaching units for the education of students with autistic spectrum disorders and structured teaching units for the education of students with multi-disability and congenital deaf-blindness.

Complementarily to the technical assistance they benefit, students with permanent special education needs and with an established Individual Education Plan are also entitled to financial support within the school social action and according to their socio-economic condition[[11]](#footnote-11), including the right to meals, transport, school textbooks and supplies, as well as financial aid in the acquisition of support technologies, as lay down by the law. As for transport, the socio-economic condition does not apply to those students with permanent special educational needs, who attend the above mentioned schools with specialised teaching (reference schools and structured teaching units).

1. As far as higher education is specifically concerned and according to Article 76(1) of the Constitution, the legal rules governing access to university and the other higher education institutions shall guarantee equal opportunities and the democratisation of the education system. By others words (and this is also reflected in the Education Act), the State is charged with creating the conditions that guarantee to everyone the opportunity to attend higher education.

Accordingly, within the framework of the national competition procedure for access to public higher education, special conditions for persons with disabilities are granted, meaning the existence of a special access quota, which is annually updated, for applicants with physical and sensory disabilities.

In addition, in the sphere of social action in higher education (both public and private), concession of a scholarship is dependent on the socio-economic situation of the applicant student[[12]](#footnote-12). Flexibility of eligibility criteria can occur as for students with physical, sensory or other disabilities, in case their degree of disability is of 60% or more, which as to be duly attested by a medical board – this special status encompasses the possibility of taking into account the student’s specific situation and expenses, in order to fix the value of his or her annual scholarship (with the limit of the reference value of scholarships), as well as the value of any financial support for accommodation and transport (in case it is needed); moreover, the possibly of a complement to the scholarship is likewise foreseen by the law, aimed at contributing for the purchase of support products that are essential for developing education activities.

Lastly and within the exercise of their autonomous drawing up of own by-laws, it should also be mentioned the existence of regulations adopted at the level of higher education institutions (public and private), regarding the support measures aimed at students with special educational needs, as for their welcoming and accompanying, curriculum and evaluation adjustments, individualised/personalised support, specific support products, accessibility and mobility in the institution concerned.

1. As for the practice of the Portuguese Ombudsman in this realm, it should be mentioned that a part of the complaints on education issues refer to the situation of children with special education needs (mainly with regard to their school insertion and access to adequate education) and also to scholarships granting.

The Ombudsman works directly with education public administration with a view to correct illegal or unfair acts of public authorities and, where necessary, to recommend changes in administrative practices or regulations or even in the legislation.

In this framework, as examples of the Portuguese Ombudsman’s action one can mention: acting towards the changing of the rule about the time/term of procedures for concession of special conditions in the secondary examinations and their correction and grading; mitigation of the reduction and insufficiency (for budget reasons) of special education teachers, therapists and operational assistants in schools; failure of the measures applied and approved in the individual plans of those children; difficulties, and sometimes impossibility, of the application of the criterion established in the law on the reduced dimension of those classes with children with special education needs.

**Health**

1. As regards to the access to healthcare within the National Health Service (SNS in the Portuguese acronym), some legal benefits may vary depending on the nature, physical or mental, of the disability at stake.

In general terms, persons with disability, no matter the category is, could be exempted of health charges (so-called “moderating fees”) in all public healthcare services, irrespective of their socio-economic condition.

Eligibility for the exemption depends on the disability triggering incapacity of 60% or more[[13]](#footnote-13). The relevant incapacity degree must be attested by a certificate (the so-called Medical Incapacity Multipurpose Certificate), issued by a medical board made up of three members and set up by the Health Authority[[14]](#footnote-14).

The application process for the above referred exemption consists in presenting the said certificate before the Health Center (primary healthcare service) where it is verified and thereafter recorded in the Patients National Registration.

It should be stressed out that there are no legal criteria specifically approved as general parameter to the assessment of the incapacity of persons with disabilities for purposes of accessing different social protection programmes. Considering the loophole, it has been applied by analogy the National Table of Incapacities caused by Work Accidents and Occupational Diseases[[15]](#footnote-15)-[[16]](#footnote-16).

2. In addition, the Portuguese law sets forth a special protection regime to persons with mental illness. Regardless of having a permanent incapacity of 60% or more, persons with mental disabilities are automatically dispensed from “moderating fees” in all mental health-related public healthcare services (including medical appointments and diagnostic and therapeutic means).

This special measure is in line with the approval of a priority plan on mental health (the National Mental Health Plan, to be implemented from 2007 to 2016), based on the assumption that mental health is a major public health priority. The Plan’s main objectives are (i) to ensure equal access to quality care for everyone with mental health disorders in the country, (ii) to promote and protect human rights of persons with mental health problems, (iii) to promote the decentralisation of mental health services (namely integrating them in primary health care) so as to enable health services closer to people and reduce the hospital burden, (iv) to facilitate greater participation of communities, patients and their families, (v) to promote the deinstitutionalization of the mentally ill.

In order to achieve these goals, heed is given to intersectoral cooperation between several ministries (Ministry of Health, Ministry of Solidarity, Employment and Social Security, Ministry of Education and Science, and Ministry of Justice).

3. The scope of the right to health regarding persons with disabilities also encompasses the right to non-emergency transportation necessary to the attendance of health services free of charge insofar as the patients meet some criteria.

According to Implementing Order 142-B/2012 of 15 May 2012, the eligibility criteria that must be cumulatively met are the following: (i) the patient is in a situation of economic insufficiency (average monthly income equal or superior to € 628,83) and (ii) the patient has a clinical situation that justified it.

As for the clinical situation requirement, the right to non-emergency transportation, as lay down by the law, is granted when: (i) there is an incapacity of 60% or more, as attested by a Medical Incapacity Multipurpose Certificate; (ii) there is a disabling clinical situation derived from some of the pathologies specifically listed in the abovementioned Implementing Order.

It is worth noting that the said Implementing Order came into force on 1 June 2012 and, contrary to the previous law, it makes the access to free transportation always dependent on the income of patients, without considering, for instance, the additional expenses arising from the existence of a situation of disability, and thus preventing some of them from accessing to a needed highly differentiated healthcare. Patients that have failed to prove their economic insufficiency might nevertheless benefit from a partial co-funding in case they need continuous treatments that entail, at least, eight transportations each month.

4. With a view to guarantee to the persons with disabilities full and effective participation in society on an equal basis with others, the State also affords some devices and assistive technologies able to improve their mobility and autonomy (*e.g*., wheel chairs). The entitlement to this benefit is granted regardless of the socio-economic condition of the applicant[[17]](#footnote-17).

5. The Portuguese Ombudsman’s activity has been addressing, on the basis of concrete cases, some of the topics raised above, with particular reference to (i) the evidence of compliance with the relevant eligibility criteria for access to health fees exemption and dispensation, (ii) the medical and administrative procedure for issuing the Medical Incapacity Multipurpose Certificate, (iii) the access to non-emergency transportation free of charge, particularly when the income of the person with disability is slightly over to the legal limit defined for the economic insufficiency.

**Right to housing and physical accessibility**

According to Law 38/2004, of 18 August (Article 32), the Government shall adopt by a national accessibility promotion plan, and taking into account the universal design:

a) Specific measures necessary to ensure the right to housing of persons with disabilities, in conjunction with local authorities;

b) Specific measures necessary to ensure the access of persons with disabilities, especially the interior and exterior spaces, through the elimination of architectural barriers in the construction, expansion and renovation.

Portuguese law regards the special needs of persons with disabilities concerning to housing:

* Law 46/2006, of 28 Augustforbids the discrimination of persons with disabilities when renting or buying housing, and when accessing to housing loans. Sanctions can be applied to those who disrespect this prohibition (Article 4 (c)).
* Housing is economically more accessible to persons with disabilities which benefit of a special regime to contract housing loans (Law 64/2014, of 26 August).
* People with a disability degree of more than 60% have the right to receive a rent subsidy. This subsidy is also payable if the spouse - or the person with whom he or she lives under terms analogous to marriage - is disabled (Decree-Law 68/86, of 27 March, Article 3).
* Housing adaptation grants for disabled people was one of the measures established by the National Strategy on Disability for 2011-2013, approved by the Council Ministers’ Resolution 97/2010, of 14 December (measure 72). Some municipalities have programs to support the costs of adapting (municipal or private) houses to make them suitable for persons with disabilities[[18]](#footnote-18).
* The horizontal property regime, since 2012[[19]](#footnote-19) allows owners with disabilities to promote actions and measures (ramps, lifts or other mechanical devices) that are necessary to ensure their accessibility to their houses (Article 1425, 3, of Civil Code amended by Law 32/2012, of 14 August). Recently, the Supreme Court of Justice[[20]](#footnote-20) admitted to apply the same regime to tenants.
* By the Decree-Law 308/2007, of 3 September the Portuguese Government created the Program “Door 65 – Youth” which supports the housing lease for permanent residence. The support consists of assigning a percentage of the value of income as a monthly grant, with benefit applications covering young persons with disabilities and other situations.
* Disabilities are taken into account when allocating social housing[[21]](#footnote-21). Persons with disabilities have preference when they are on equal conditions with other candidates.
* The New Urban Lease Regime confers special protection to disabled tenants[[22]](#footnote-22). For instance, it provides for the possibility of deferring an eviction from rented housing property in case the evicted has a disability with a proven degree of incapacity exceeding 60%.

Portuguese law and policies promote accessibility to the built environment:

* The technical norms of accessibility to all the public buildings and housing where approved by the Decree-Law 163/2006, of 8 August. The Institute for Housing and Urban Rehabilitation[[23]](#footnote-23) is the Portuguese body responsible for the evaluation of the implementation of these standards. City councils shall elaborate annual reports of the current situation based on the evidence gathered in their respective supervisory actions (Article 22, 2).
* The National Plan of Promotion of the Accessibility, approved by the Council of Ministers’ Resolution 9/2007, of 17 January, defines the strategy to ensure accessibility to buildings, transports and technologies of information and communications. The objective of this plan is to remove obstacles and barriers faced by citizens through an integrated and coordinated policy to promote accessibility in Portugal up to 2015. The National Institute for Rehabilitation[[24]](#footnote-24) is the Portuguese body responsible for monitoring the implementation of that plan.
* The National Strategy on Disability for 2011-2013, approved by the Council Ministers’ Resolution 97/2010, sets out priority areas for action to improve the lives of people with disability, and one of them is «Accessibility and Universal Design».

Law 38/2004, of 18 August ensures participation of people with disabilities or respective representative organisations in the drafting of legislation on disability, its execution and evaluation, concerned with social participation (Article 40).

Numerous works have been carried out on existing buildings to facilitate personal mobility of persons with disabilities, such as adapting lifts, accessible toilets and ramps.

Despite the efforts to promote independent living and autonomy for people with disabilities and to design policies and programmes to promote their rights, there is still much to do to implement the accessibility law (Decree-Law 163/2006 of 8 August). In fact, housing, housing-related facilities, neighbourhoods, and public buildings were designed for people without disabilities.

Unfortunately, the Decree-Law 53/2014, of 8 April, approved an exceptional regime for rehabilitation of buildings that exempts some urbanistic operations from observance of accessibility law (Article 4).

The Portuguese Ombudsman[[25]](#footnote-25) has the legal authority (Article 20 (e) of the Statute of Ombudsman approved by Law 9/91, 9 April) to deal with complaints regarding these subjects. The Portuguese Ombudsman has undertaken several initiatives to improve conditions of accessibility in private and public buildings and concerning car parking facilities for people with disabilities.

Individuals have also access to judicial and administrative mechanisms. Citizens can complaint directly to the Institute for Housing and Rehabilitation, and to the municipalities. The National Institute for Rehabilitation receives complaints, forwards them to the concerned authorities, and prepares an annual report on the enforcement of the above mentioned Law 46/2006, of 28 August (Article 8).

The Portuguese law enshrines benefits, namely of tax nature, with the objective of promoting social inclusion of disabled persons, as follows:

**Individual Income Tax**

An individual income tax exemption of 10% is set for income up to a limit of €2.500,00, from employment, self-employment and pensions.

The following tax credits should be noted:

1 – A tax credit in the amount of €1.900,00 is available to each taxpayer with a disability and on the amount of €712,50 for each disabled dependent and for each ancestor who satisfies the conditions set out in Article 79(1) e) of the Individual Income Tax Code (i.e, they are part of the same household and do not earn more than the minimum pension of the general regime).

2 – A tax credit may also be claimed for 30% of total expenditure incurred on education and rehabilitation of the taxpayer or dependents with disabilities, and 25% of total life assurance premiums paid to mutual associations to insure only against the risk of death, invalidity or old-age retirement in the latter case provided namely the benefit is guaranteed after 55 years of age and five years duration of the contract, and where they appear as primary beneficiaries.

3 - The credit for insurance premiums paid to mutual associations referred to in the preceding paragraph shall not exceed 15% of the personal income tax liability.

4 – A person is considered disabled with a degree of permanent disability, duly supported by a medical certificate of multipurpose disability issued in accordance with the applicable legislation, equal to or exceeding 60%.

5 – A credit is available for special assistance costs, of up to the amount of €1.900,00 for each taxpayer or dependent, whose degree of permanent disability, duly certified by the competent entity, is not less than 90%.

6 - To every disabled taxpayer in the Armed Forces covered by the decree-laws no. 43/76 of 20 January, and no. 314/90 of 13 October, who is entitled to the credit provided in paragraph 1 above, a credit shall also be granted equal to the amount of of €475,00.

7 - The deductions provided for in paragraphs 1, 5 and 6 are cumulative.

In addition, a tax credit of 25%, with the limit of €403,75, may also be claimed in respect of charges for homes and institutions to support persons with disabilities, their dependents, ancestors and relatives to the third degree who do not have incomes above the minimum monthly wage (currently set at €505,00).

Also, individual Income Tax does not apply to grants awarded to practitioners of high-performance sports by the Paralympics Committee of Portugal, under the contract-programme of preparation for the Paralympic or Deaflympics Games by the relevant federation having the status of sport public utility.

**Vehicle Circulation Tax**

Exemption of vehicle circulation tax (1 vehicle per year) is granted for persons with a degree of permanent disability equal to or exceeding 60%, duly supported by a medical certificate of multipurpose disability issued in accordance with the applicable legislation, regarding certain vehicles.

**Vehicle Registration Tax**

Exemption of vehicle registration tax in the purchase of new vehicles is granted, as follows:

*Content of the exemption*

1 - Exemption applies to vehicles intended to the own use of persons with motor disability, over the age of 18 years, as well as to the use of persons with profound multi-disability, disabled persons who exclusively move in wheelchairs, visually impaired disabled persons, whatever their age, and Armed Forces disabled persons.

2 – The exemption applies to vehicles with CO2 emissions up to 160 g/km and cannot exceed the amount of €7.800,00

3 – The limit of CO2 emissions up to 160 g/km does not apply to vehicles specially adapted to the transportation of disabled persons who exclusively move in wheelchairs. In this case, the limit is increased to 180 g/km when the vehicle is required, by the medical certificate of multipurpose disability, to have automatic transmission.

*Conditions of the tax payer*

Persons with motor disability – those who, due to changes in the structure and functions of the body, congenital or acquired, have a functional impairment of a permanent nature, of degree equal to or greater than 60%, and present difficulty in locomotion on the public road without aid or resource to compensation means, namely prosthetics, orthotics, wheelchairs and crutches, in the case of motor disability at the level of the lower limbs, or difficulty in access to or use of conventional collective public transport, in the case of motor disability at the level of the upper limbs.

Persons with profound multi-disability – those with motor disability that in addition to meeting the conditions referred to in the preceding paragraph, have one or more disabilities, of which results a degree of disability equal to or greater than 90%, implying strong difficulty in locomotion on the public road without aid or resource to compensation means, or in access to or use of conventional collective public transport and who are demonstrably prevented from driving automobiles.

Disabled persons who exclusively move in wheelchairs - those with a disability of motor or other origin, of a permanent nature, with a degree of disability equal to or greater than 60%, whose locomotion is made exclusively through the use of wheelchair.

Visually impaired disabled persons - those who have permanent changes in the field of vision of 95%.

Armed Forces disabled persons – those considered as such under Decree-Law no. 43/76 of 20 January and have a degree of disability equal to or greater than 60%, irrespective of its nature.

The percentage of disability is determined in accordance with the National Table of Disabilities which is in force on the date of its determination by the respective Medical Committee.

**Value Added Tax**

*Exemptions*

The supply of services and goods closely relating thereto, performed in conducting their habitual activity by establishments for disabled youth.

Imports of tricycles, wheelchairs, with or without motor, passenger or mixed vehicles for the personal use of the disabled, in accordance with the conditions laid down in the code of vehicle taxes. The benefit should be requested under the terms established in the latter Code.

*Supply of goods and services to which a reduced rate (currently 6%) applies*

Orthopaedic equipment, surgical belts and medical stockings, wheelchairs and similar vehicles, operated manually or by motor, for the disabled persons, appliances, artifacts and other prosthetic material or compensation intended to replace, in whole or in part, any member or organ of the human body.

Utensils and any apparatus or articles specifically designed for use by persons with disabilities, since they appear on a list approved by the Government.

Services of maintenance or repair of prosthesis, equipment, appliances, artifacts and other goods referred in the two preceding paragraphs (this was introduced in the VAT Code, in 2009, following an intervention of the Portuguese Ombudsman).

The supply of domestic care services of disabled persons.

**Subsidized housing loan regimes**

Persons with disabilities, over the age of 18 years and with a degree of disability equal to or greater than 60%, duly supported by a medical certificate of multipurpose disability, may benefit from a subsidized housing loan regime, through a special interest rate.

Credit institutions are not required to grant credit under this special regime. However, in the case of subsidized housing credit to persons with disabilities, the law provides for the right of the customers to the conversion of their loans when the acquisition of the degree of disability, equal to or greater than 60%, is later than the conclusion of the contracts of housing loan.

Loans under this regime can be used, for example, for the acquisition of property intended for permanent housing and for land acquisition and construction of property intended for permanent housing.

The maximum amount of the loan is, in 2015, of €190,000,00. This amount will be updated annually based on the consumer price index. Also, the loan amount cannot exceed 90% of the value of housing evaluation by the credit institution

There is also a regime of subsidized credit applicable to disabled persons of the armed forces, with a degree of disability equal to or greater than 60%, for the acquisition and construction of property intended for permanent housing. Loans under this regime are subject to the conditions laid down for employees of credit institutions.

1. An English version of the Portuguese Constitution is available at the Parliament’s website: http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf. [↑](#footnote-ref-1)
2. Article 71 inserted in the Chapter devoted to the “social rights and obligations”. [↑](#footnote-ref-2)
3. Article 1 of Law 38/2004 of 18 August 2004, which settles the general basis of the legal regime on prevention, habilitation, rehabilitation and participation of persons with disabilities. [↑](#footnote-ref-3)
4. As complemented by Implementing Order 293/2013 of 26 September 2013. [↑](#footnote-ref-4)
5. Law No. 4/2007, as amended by law No. 83-C/2013, of 30 December. [↑](#footnote-ref-5)
6. (vid. Ombudsman's Report of 2002, p. 593 e 691). [↑](#footnote-ref-6)
7. (vid. Ombudsman's Report of 2008, p. 366). [↑](#footnote-ref-7)
8. Law 46/86 of 14 October 1986, as last amended by Law 85/2009 of 27August 2009. [↑](#footnote-ref-8)
9. The word “student” is used in the present text as encompassing all levels of education. [↑](#footnote-ref-9)
10. Decree-Law 3/2008 of 7 January 2008 (as amended by Law 21/2008 of 12 May 2008), which defines the specialised support to be provided in pre-school education and in primary and secondary education, encompassing the public, private and cooperative sectors. [↑](#footnote-ref-10)
11. Decree-Law 55/2009 of 2 March 2009, which establishes the legal regime for the allocation and operation of support measures within the school social action. [↑](#footnote-ref-11)
12. Decree Law 129/1993 of 22 April 1993, as last amended by Decree-Law 204/2009 of 31 August 2009. [↑](#footnote-ref-12)
13. Article 4(c) of Decree-Law 113/2011 of 29 November 2011, amended and republished by Decree-Law 117/2014 of 5 August 2014. [↑](#footnote-ref-13)
14. Decree-Law 202/96 of 23 October 1996, amended by Decree-Law 291/2009, of 12 October 2009. [↑](#footnote-ref-14)
15. Approved by Decree-Law 352/2007 of 23 October 2007. [↑](#footnote-ref-15)
16. This issue has already been addressed by the Portuguese Ombudsman who pointed out before the Minister of Health and the Minister of Solidarity, Labour and Social Security said legislative deficiency, suggesting the creation of National Table of Incapacities more appropriate to assess persons with disabilities and persons with chronic diseases. Even though the addressed entities had agreed with the suggestion, it has not been enacted any new legislation hitherto. [↑](#footnote-ref-16)
17. Decree-Law 93/2009 of 16 April 2009 and Dispatch 6133/2012 of 10 May 2012. [↑](#footnote-ref-17)
18. For instance, the “Program Open House” in Lisbon City Council (www.cm-lisboa.pt/viver/intervencao-social/pessoas-com-deficiencia/casa-aberta). [↑](#footnote-ref-18)
19. The review of the horizontal property regime to promote accessibility on the common parts of residential buildings was one of the measures established by the National Strategy on Disability for 2011-2013, approved by the Council Ministers’ Resolution 97/2010, of 14 December (measure 31). [↑](#footnote-ref-19)
20. Judgment date: 26 February 2015 (www.dgsi.pt). [↑](#footnote-ref-20)
21. <http://www.cm-lisboa.pt/servicos/por-temas/concursos/habitacao-municipal-> candidatura-de-acesso. [↑](#footnote-ref-21)
22. Articles 15.º-N, 2, (b), 26.º, 4, (c), 25, 1, 57, 1, (e), 107, 1 (a) of the New Urban Lease Regime, recently amended by Law 79/2014, of 19 December. [↑](#footnote-ref-22)
23. http://www.portaldahabitacao.pt/pt/ihru. [↑](#footnote-ref-23)
24. http://www.inr.pt. [↑](#footnote-ref-24)
25. http://www.provedor-jus.pt. [↑](#footnote-ref-25)