

Defining and mapping elderly policies

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1. INTRODUCTION. THE COMPLEXITY IN DEFINING ELDERLY POLICIES

Ageing is mainly evidenced by the increase in the population aged 65 and older (“older adults” or “seniors”). However, the economic and social impact of population ageing also depends on other demographic aspects (lower birth rates, smaller families, depopulation, lower mortality rates and higher life expectancy). The simultaneous occurrence of these demographic trends gives rise to a social structure that differs from that on which the modern State—and some of its distinct features like welfare regimes—was based.¹

Traditionally, ageing-related policymaking has focused on two main challenges posed by older adults. First, older adults cease to be part of a country’s working-age population, thereby reducing employment income. Second, becoming an older adult often entails a greater demand for care services, particularly health care. Implementing pension and health care systems has thus been states’ traditional approach to ageing-related challenges. Since they both require extensive financial and human resources, this approach has sparked debate about the very sustainability of welfare systems in light of the increased ageing process.

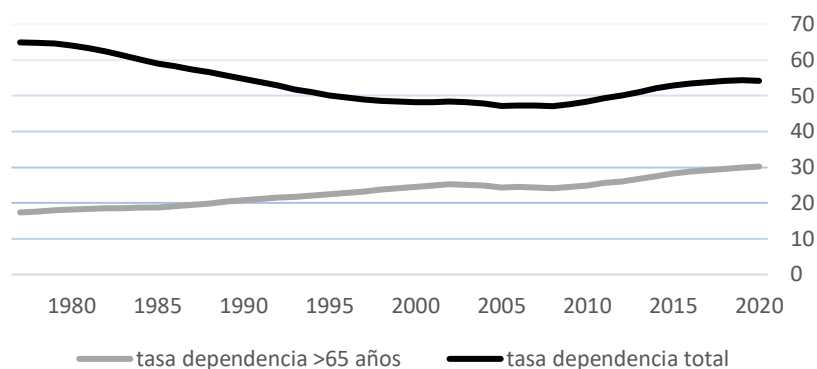
The debate on welfare systems’ sustainability revolves around the imbalance created on the working-age population by the said demographic trends. This active or working-age population is affected by lower birth rates and a growing dependent population in greater need for social services and welfare benefits. The imbalance has increased as a result of demographic projections, thus justifying the modification of pension systems to (i) increase the number of workers (contributors); (ii) foster private pension schemes through tax incentives; or (iii) raise the retirement age.²

¹ Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press. Esping-Andersen, G. (1996). After the golden age? Welfare state dilemmas in a global economy. *Welfare states in transition: National adaptations in global economies*, 1-31. Powell, M., & Barrientos, A. (2004). Welfare regimes and the welfare mix. *European journal of political research*, 43(1), 83-105.

² Aysan, M. F., & Beaujot, R. (2009). Welfare regimes for ageing populations: no single path for reform. *Population and Development Review*, 35(4), 701-720.

In Spain, the development of the overall dependency ratio and the dependency ratio for older adults aged 65 and older³ show contrasting trends until recently (see Figure 1 below). The rate of dependent persons out of the overall working-age population had a downward trend that reversed in 2010. From that year, there was an increase in both the overall dependency ratio and that of older adults. This trend intensifies the debate over the impact of population ageing. There is a pressing need for measures ensuring the welfare model's sustainability.

Figure 1. Development of dependency ratios (1978-2020). Expressed as a percentage.



Source: Spanish National Statistics Institute (INE). Own elaboration

With limited resource availability, an assessment of the ageing process revolving around the gap between young and older adults inevitably leads to an analysis of the most appropriate public policies from the perspective of intergenerational justice. In other words, when it comes to making decisions about ageing-related matters, we should wonder whether (and to what extent) it is fair to detract resources from young adults largely allocating them to seniors instead.

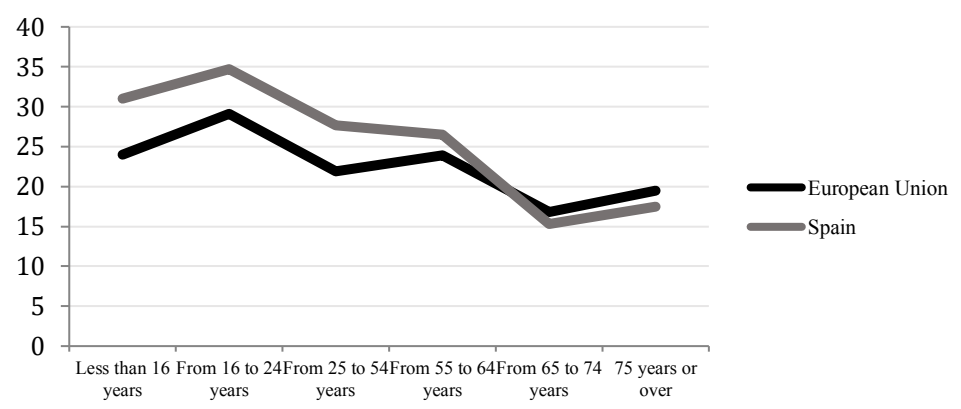
Nevertheless, this could be an overly simplistic approach. Using dependency ratios as the guiding principle for public policymaking can conceal the fact that age and productivity (i.e., working-age and dependent population groups) do not always match. On the one hand, part of the working-age population segment, aged 16-64, might not be economically active for various reasons (they may be receiving education and training, they could be unemployed or disabled). On the other, some adults over 65 are still working beyond pension age, mostly in less physically demanding jobs or under flexible retirement schemes. Additionally, there are major differences in the economic contributions within the working-age population, depending on (i) temporary employment; (ii) salaries; and (iii) job stability. These aspects further complicate the relationship between working-age and dependent population, making it hard to design public policies exclusively based on the share of persons in each age group.

³ The dependency ratio equals the population under the age of 16 and over 64 over those aged 16-64. The dependency ratio of adults aged 65 and older equals the share of population below 16 over the population aged 16-64.

Furthermore, empirical studies are inconclusive regarding the relationship between ageing and key economic indicators. Ageing processes seem to have a negative impact on the economy. Such negative impact would be triggered by: (i) a reduction in working-age population; (ii) reduced productivity; (iii) an increase in the demand for social services; and (iv) increased public spending on pensions and health care. However, there is no linear relationship between ageing and the economic indicators. In fact, France or Italy have high ageing ratios and remain two of the world's leading economies. Note that health care expenditure is not always associated with ageing. It may also be associated with other factors such as the cost of medical products and services. Indeed, although its population is less aged than many other OECD countries', the US spends more on health care than European countries with considerably older citizens.⁴

As a result of the 2008 economic crisis, the risk of poverty or social exclusion for older adults changed significantly. Between 2008 and 2012, the at-risk-of-poverty rate for persons aged 65 and older decreased by 10 percentage points and became the lowest overall (including all age groups).⁵ We find this trend both in Europe and Spain, hinting at lower at-risk-of-poverty-and-social-exclusion rates for older age groups (Figure 2).

Figure 2. EU-Spain comparison: People at risk of poverty or social exclusion (2017).



Source: Eurostat. Own elaboration

This parameter's development also shows that it depends on economic cycles. In Spain, the downward trend of the at-risk-of-poverty rates for older adults in 2008-2012 reverses from 2015 onwards.⁶ This suggests that the declines in poverty rates are also due to cyclical reasons and the overall worsening of economic contexts, and not only to political action specifically addressed to prevent these risks.

⁴ Gusmano, M. K., & Okma, K. G. (2018). Population ageing and the sustainability of the welfare state. *Hastings Center Report*, 48, S57-S61.

⁵ Abellán García, A., Ayala García, A., & Pujol Rodríguez, R. (2017). Un perfil de las personas mayores en España, 2017. Indicadores estadísticos básicos.

⁶ García, A. A. and Rodríguez, R. P. (2019). Un perfil de las personas mayores en España, 2019. Indicadores estadísticos básicos. *Consejo Superior de Investigaciones Científicas (CSIC). Centro de Ciencias Humanas y Sociales (CCHS). Envejecimiento en red. ISSN: INFORMES envejecimiento.*

Coming up with political responses to ageing-related matters is hard due to (i) the complex impact of population ageing on the socioeconomic system; and (ii) the ties between ageing and other demographic trends. Regarding elderly policies, public authorities rely on identifying and balancing any ageing-related risks and opportunities at stake in each national context. Public authorities' interpretation of ageing processes is also essential. Although decision-making authorities have construed gradual population ageing as a threat to welfare systems, they have also seen ageing as an opportunity to develop a new market tied to the provision of services for seniors; hence the notion of "silver economy."⁷

Ageing policies currently fall within an intense transformation of social structures. This transformation is affecting one of the decisive elements in the delivery of services for seniors, i.e., family structures, mostly in Southern European countries' welfare regimes. In 2016, in Europe, two-thirds of the households were made up of 1 or 2 people. From 2007 to 2016, 1-2 person households went from 60.1% to 63.7%, whereas 4-person households decreased the most (by 1.7 percentage points). Single-member households made up of over 65s amounted to 39% of all one-person households.⁸ This scenario suggests that families are decreasingly able to provide a context for (i) intergenerational solidarity; and (ii) the exchange of assistance and benefits supplementing care services provided by public authorities, the third sector, or private entities.

Given the complex relationships between ageing and *socioeconomics*, it is questionable that elderly or ageing policies should only rely on age. If elderly policies are solely based on age, they would only cover measures addressed to adults aged 65 and older. However, ageing-related strategic plans and guidelines are increasingly broadening their scope: the core of these policies used to be pensions and health care, but it is now extending to a broader range of policy areas where age is not always the decisive criterion to determine the recipients or addressees of actions and programmes. These policy areas include urban planning, infrastructures and environmental aspects, as well as social and political participation.

In this scenario, the definition of ageing policies and thus the allocation of powers to the various government levels is not always clear cut. This chapter aims to further clarify this definition with a twofold purpose. The chapter (i) examines the contents of elderly policies; and (ii) delves into these contents in connection with the allocation of powers considering Spain's distribution of power between the State and the Autonomous Regions.

⁷ The so-called "silver economy" is one of the economic sectors with the greatest growth potential. It is also tied to innovative technology. The European Commission has launched several programmes along these lines (*Active and Assisted Living Joint programme, eHealth Action Plan, European Innovation Partnership on Active and HealthyAgeing, Horizon 2020 Societal Challenge 1 on Health, Well being and Active Ageing*).

⁸ European Commission (2017). *People in the EU: who are we and how do we live?*

The chapter is divided into four sections. Section 2 examines the contents of elderly policies focusing on the broadening of their scope, i.e., on how they are not currently covering only welfare matters, but also increasingly more policy areas. This section lays down the positive and negative dimensions found when defining the contents of elderly policies. Section 3 examines various regional legal frameworks regarding elderly policies, focusing on the core or basic rules that lay the foundations for administrative action, i.e., *Estatutos de autonomía* (often referred to as “regional constitutions”) and pieces of regional legislation on Welfare Services and the elderly. Section 3 also provides a categorization of regional legal frameworks based on whether social services and benefits qualify as individual rights. Additionally, this section discusses the relationship between regional implementation and enforcement (through implementing provisions) and national authorities’ powers to set out the basic conditions to ensure that such individual rights are exercised on an equal footing. Finally, section 3 examines a potential correlation between the actual provision of benefits and services for the elderly (coverage) and the existing legal frameworks. Section 4 summarizes the concluding remarks of this study and outlines the main trends found in both (i) elderly policymaking and (ii) the allocation of elderly policies to the various government levels.

2. CONTENTS OF ELDERLY POLICIES

Currently, the scope of elderly policies extends to various fields of administrative and legislative action that often overlap. These administrative and legislative actions address the risk of having senior citizens losing purchasing power after retirement, as well as seniors’ needs for social assistance and health care. But also, decision-makers and lawmakers seek to guarantee citizens’ lifetime well-being by engaging them in the economic, social and political structures. What ultimately defines elderly policies is the purpose of ensuring individuals’ full autonomy during their adult lives.

Public authorities seek to guarantee that individuals enjoy their rights throughout their lives, and they do so in a twofold manner. There is a negative dimension: public authorities try to prevent age-based discrimination. There is also a positive dimension, covering individual rights and different benefits aimed at ensuring older adults’ autonomy and well-being. Both dimensions together define the contents of elderly policies. Article 14 of the Spanish Constitution (*Constitución Española*, CE) provides the principle of equality, thereby banning discrimination on the basis of age. Accordingly, age (i) provides grounds to identify social groups requiring special protection; (ii) is a guiding factor for socioeconomic policymaking (Art. 50 CE). The implementation of public policies catering to older adults based on the aforesaid dimensions has not been steady. Partly, due to the differences in public authorities’ priorities and resource availability.

2.1. Non-discrimination on the basis of age

Elderly policies do not evolve only through welfare assistance and integration programs. The constitutional requirement of non-discrimination on grounds of age also impacts the scope of these policies. The Spanish Constitutional Court (*Tribunal Constitucional*, TC) found that age is included in the non-discrimination clause of Art. 14 CE. In Judgment no. 75/1983, of 3 August, the TC argued that “*Article 14 does not provide an exhaustive list of grounds of non-discrimination. Therefore, it does not matter that age is not expressly listed, because Art. 14 does prohibit any form of discrimination on the basis of ‘any other personal or social condition’, clearly including age.*” Extensively interpreting the personal circumstances that cannot undermine equality is consistent with the prevailing line of case law on the European Convention on Human Rights (ECHR).⁹

Also within the European framework, both the Charter of Fundamental Rights of the European Union (CFREU)¹⁰ and the Court of Justice (CJEU) case law¹¹ expressly prohibit age-based discrimination. Indeed, the CJEU found that non-discrimination on the basis of personal conditions was a general principle of EU law. As a result, this principle has been included into Union primary law and is thus one of the legal standards available to the Court of Justice to review and interpret legal acts within the EU. The general principle of non-discrimination is across EU provisions in many fields other than welfare. See, for instance, Council Directive 2000/78/CE, of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (Arts. 2 and 6).

Nevertheless, as clarified by Constitutional Court Judgment (STC) no. 66/2015, of 13 April,¹² non-discrimination on grounds of age is sometimes unclear (pun intended). One must not assess age-based discrimination in the abstract, but based on the specific circumstances of the case. Discriminatory treatment on the basis of age often comes along with other forms of discrimination (on grounds of sex or disability). Therefore, it is complicated to autonomously define and distinctly apply the principle of non-discrimination on the basis of age. Furthermore, sometimes there are other rights at stake, requiring courts of justice to weigh and strike a fair balance. In this connection, the Constitutional Court ruled as follows: “*(...) unlike the general principle of equality, which does not require equal treatment as an aim but rather that any differentiation or*

⁹ Judgments of 10 June 2010, *Schwizgebel v. Switzerland*, and of 15 September 2016, *British Gurkha Welfare Society and others v. The United Kingdom*.

¹⁰ Article 21(1) of the Charter of Fundamental Rights of the European Union (CFREU), which is binding under Art. 6 of the Treaty on European Union (TEU), expressly bans any form of discrimination, including on grounds of age.

¹¹ Judgments of 13 November 2014 (preliminary ruling, C-416/13, Case *Mario Vital Pérez v. Municipality de Oviedo*) and of 15 November 2016 (preliminary ruling, C-258/15, Case *Gorka Salaberria Sorondo v. Academia Vasca de Policía y Emergencias*); Judgment of the Court (Grand Chamber), of 19 January 2010, C-555/07, Case *Küçükdeveci v. Swedex GmbH*, legal basis 21.

¹² Legal bases 3 and 4.

unequal treatment be justified, non-discrimination under Art. 14 CE does require to strictly assess whether the unequal treatment was reasonable and fair, thereby generally establishing that equal treatment be achieved (i.e., that it be an aim). Consequently, Art. 14 provides for a much more strict constitutional assessment, using more stringent standards (STC no. 126/1997, of 3 July, legal basis 8, referring to Constitutional Court Judgments no. 229/1992, of 14 December, legal basis 4; no. 75/1983, of 3 August, legal bases 6 and 7; and no. 209/1988, of 10 November, legal basis 6) (...).”

In sum, in age-based discrimination cases, the burden of proving that any differentiation or unequal treatment is fair and reasonable is on whoever makes the decision that could qualify as discriminatory. This aspect does not raise major interpretative concerns. It entails that any rule or decision should include, in addition to the age-based differentiation, a justification related to the ultimate aim pursued thereby. It is a mostly formal criterion, but it can create some evidentiary hurdles, since any justification for unequal treatment must be based on the rule’s or decision’s ultimate purpose. Assessing proportionality raises even more concerns, because proportionality is more closely tied to the factual background of the case. The Constitutional Court’s findings show the importance of two aspects in order for decisions or measures to be deemed justified or reasonable: (i) minimizing the burdens on the elderly; and (ii) providing for appropriate compensation or relief for this age group. In its ruling of 13 April (STC no. 66/2015), the Constitutional Court found that dismissing the oldest—and thus closest to retirement—employees did not qualify as age-based discrimination. The Court argued that the employer did not breach the applicable legal framework and paid the legally established compensation.¹³

Bringing this line of case law into the legislative framework does not mean that persons cannot be afforded greater protection based on their age or vulnerability (see STC no. 190/2005, of 7 July, regarding the protection of underage victims). In fact, this principle of non-discrimination must be read together with the protective provisions for vulnerable groups and governing principles laid down in Chapter 3 of Title 1 of the Spanish Constitution. However, the principle of non-discrimination does prevent that access to services or activities be made dependent on age (STC no. 161/2011, of 19 October). Whereas relying on the retirement age is in line with the equality principle, preventing access to services or the performance of certain activities on grounds of age does violate the principle of non-discrimination. This evidences that decisions based on age must meet more stringent requirements in terms of justification, reasonableness and proportionality

¹³ In particular, STC no. 66/2015 noted that “[r]egarding collective dismissals (i) involving companies not subject to insolvency proceedings and (ii) including employees aged 55 and older who did not qualify as unemployment insurance recipients by 1 January 1967, companies must pay additional compensation to finance a special insurance scheme for these employees” (legal basis 6).

to fulfill the principle of non-discrimination than to abide by the general equality principle.¹⁴

The prohibition of age-based discrimination gives rise to some sort of “universal” protection of individuals. However, the implementation of elderly policies in accordance with the guiding socioeconomic principles (Art. 50 CE) does not always result in a homogeneous protective framework. Firstly, the implementation of elderly policies varies depending on the different fields, which range from a core of pension and health care services, to citizens’ participation in social and political structures, or seniors’ engagement in economic activity. Secondly, regarding social assistance, the allocation of powers can affect the scope and coverage of elderly policies.

2.2. The social core of elderly policies

Elderly policies have usually been assistance-oriented, aimed at addressing risks related to retirement and the worsening of older adults’ physical health. At first, protective mechanisms mostly revolved around State aid and charity. Social assistance then became a sophisticated system of benefits and rights, provided in statutory provisions and requiring a complex administrative structure involving various government levels.

Elderly policies essentially revolve around social services aimed at preventing or addressing risks, meeting needs and ensuring citizens’ well-being. Among other guiding socioeconomic principles, Art. 50 of the Spanish Constitutions requires public authorities to ensure seniors’ well-being and that they have sufficient economic resources, particularly addressing health, housing, culture and leisure. Regarding the availability of economic resources, Art. 50 provides for the establishment of an appropriate pension system that should be periodically updated to fulfill its purpose.

In line with their social welfare powers (Art. 148(1)(20) CE), regional governments must establish social service systems implementing the social or assistance-based core of elderly policies. When implementing elderly policies, regional authorities can provide welfare services at different levels. It will depend on (i) the type of benefits and (ii) citizens’ ability to claim welfare benefits from the relevant public bodies. Regarding (ii), regional rules and regulations have one of two approaches. Some frameworks provide for benefits and services as long as there is sufficient budget allocation. Other provide for these benefits as individual rights, thereby guaranteeing (i) that citizens are entitled to them and can claim them and (ii) that there be sufficient budget allocation. Under the second approach, services and benefits for the elderly qualify as social rights that are

¹⁴ The justification must be in line with the provision’s underlying purpose. For instance, in its Judgment no. 2016/2699–ruling on Madrid Regional Order no. 1363/1997 on the application procedure and eligibility requirements for public care facilities for persons with intellectual disabilities–the Constitutional Court found that the Order provided no justification whatsoever for only accepting applicants “[a]ged 18 to 60.”

always enforceable vis-à-vis the competent public authorities and before the courts of justice, where sufficient budget allocation must always be guaranteed.¹⁵

As further discussed below, at a regional level, the allocation of powers regarding social care has given rise to different frameworks in terms of enforceability and guarantees. But there are some common foundations mostly provided by Act 39/2006, of 14 December, on the Promotion of Personal Autonomy and Care for dependent persons (*Ley 39/2006, de 14 de diciembre, de Promoción de la Autonomía Personal y Atención a las personas en situación de dependencia*, LAPAD). This Act allowed to advance the social core of elderly policies from a benefit-provision sphere to the field of individual rights and entitlements. It therefore reinforced public authorities' commitment to ensuring the delivery of social services. As a result of the LAPAD, regional governments updated and modified their welfare frameworks, which then provided for social services and benefits as individual rights,¹⁶ no longer dependent on financial resource availability.

As for the LAPAD, note that “dependency” is not only associated with ageing. “Dependent” means a person who relies on another person or entity for support in his/her daily lives. The cause for dependency may be ageing, as well as any other circumstances undermining individual autonomy (including illnesses, impairments or disabilities). However, the LAPAD's preamble mentions that the dependency ratio is a lot higher for older adults than for the rest of the population (32% versus 3%).

The set of benefits and rights aimed at addressing dependency fall within regional authorities' scope of powers. Therefore, the ties between elderly policies and social services generates interactions—and sometimes clashes—between national and regional lawmakers. Indeed, the very adoption of the LAPAD (passed by the national legislature) stirred debate about who was entitled, under the Constitution, to pass such a piece of legislation, depending on whether it was considered a social security provision, a social service provision or a health care provision, since these fields are allocated to different government levels.¹⁷ In Judgment no. 18/2016, of 4 February, the Constitutional Court

¹⁵ Regarding the consideration of welfare rights as fundamental rights, see Sanchís, L. P. (1995). Los derechos sociales y el principio de igualdad sustancial. *Revista del centro de estudios constitucionales*, (22), 9-57. Marcos, J. I. C. (2017). La vis expansiva de los derechos fundamentales y su incidencia en la configuración y exigibilidad de los derechos sociales. *Revista Española de Derecho Constitucional*, (110), 105-140. Castro, J. L. C. (2009). Derechos sociales. *Cuadernos de Derecho Público*.

¹⁶ The LAAD's scope of application was not only the elderly, but its preamble did emphasize that addressing population ageing was one of the Act's purposes. The preamble is worded as follows: “Demographic and social changes in Spain are triggering steady increases in the percentage of dependent population. First, note that the population over 65 has doubled over the last 30 years. It has gone from 3.3 million in 1970 (9.7% of the overall population) to more than 6.6 million in 2000 (16.6% overall). On top of that, there is the so-called ‘ageing of ageing’ demographic trend, i.e., the increase of seniors aged 80 and older, which have doubled in only 20 years.”

¹⁷ Bracho, C. A., & Seco, J. M. A. (2017). Las prestaciones de atención a la dependencia y su consideración como derechos sociales. *Revista de Derecho Político*, 1(100), 987-1025.

ruled that the LAPAD qualified as a social assistance provision, outside the scope of social security matters (allocated to the national legislature under Art. 149(1)(17) CE). However, the national legislature claimed that its legal basis to pass the LAPAD was Art. 149(1) CE. Under this article, national authorities (i.e., the national government level as opposed to regional authorities) have exclusive competence over any matters regarding the exercise of rights on an equal footing. In sum: the debate about the constitutional allocation of powers encourages authorities to arrange dependency-related social benefits and services as a set of fundamental rights. Because such an approach allows to consider that national lawmaking in this field is exercising the national authorities' competences over the equal exercise of rights.

Arranging the social core of elderly policies as a set of individual rights to ensure equality in the exercise of rights does not only guarantee the enjoyment of rights by individuals. This rights-based arrangement also has an impact on the relationships between national and regional authorities regarding the definition of social services. If the content of social services and benefits qualifies as an individual right, the competent authorities must ensure that there are sufficient budget funds available for the provision thereof. The passage of the LAPAD was a turning point for the definition of elderly policies' social core. As a result of the LAPAD, subsequent regional legislation on Welfare Services provided for the notion of "individual rights," thereby transforming the essence of social services and welfare benefits, which used to depend on budget funds (public spending) and regional authorities' discretion.

Considering the prohibition of age-based discrimination discussed above, the implementation of elderly policies at regional level is subject to two clear boundaries: (i) at the foundations, there are fundamental equality requirements laid down by national authorities; and (ii) there is also an upper limit, i.e., compliance with the principle of non-discrimination on grounds of age reviewed by judicial bodies.

2.3. Elderly policies are all-encompassing

The allocation of elderly policymaking to the existing government levels is not the only aspect affecting the contents of elderly policies. Elderly policies tend to be all-encompassing, extending across the public policies covered thereby. This is due to several reasons. First, it is hard to identify the actual relation between ageing and the main socioeconomic indicators (including GDP and productivity rates). Second, elderly policies are often implemented through guidelines and similar instruments endorsed by international organizations' plans. Third, in multilevel government countries, like Spain, the various government levels involved implement public policies based on their areas of competence. As a result, elderly policies and guidelines have a wide array of priorities

depending on the government level actually implementing the actual age-related policies.¹⁸

The National Elderly Council's *National Strategy for active ageing and good care for the elderly 2018-2021* (the National Strategy, *Estrategia nacional de personas mayores para un envejecimiento activo y para su buen trato 2018-2021*) aptly exemplifies the guideline-oriented and all-encompassing nature of elderly policies. This strategic plan is aimed at promoting active ageing, improving the living conditions of older adults and addressing the needs of dependents. Elderly policies are guideline-oriented, as shown by (i) the outlining of broad goals without focusing too much on the means; (ii) the various fields of action covered by these policies; and (iii) the coordination between government levels required by the myriad of policy areas involved.¹⁹

Healthy ageing seeks to render effective older adults' individual rights in the economic, political and legal spheres. The healthy ageing agenda mostly aims at preventing age-based discrimination. But it is also driven by another goal: forcing public authorities, along with all social, economic and political stakeholders, to lay the groundwork allowing ageing not to undermine older adults' functional ability.

Most actions included in the National Strategy relate to economic and financial aspects, clearly showing that the social core of elderly policies is all-encompassing and tends to expand to other policy areas. The National Strategy puts forward the need to adapt professional careers and working conditions to workers' needs as they age: (i) avoiding, for instance, that workers over the age of 50 disappear from the job market and (ii) meeting the specific needs triggered by retirement both in rural and urban environments. The Strategy includes tax-related measures (including measures related to tax benefit schemes) to achieve these goals, as well as training programs and adjustments to the workers' roles and responsibilities throughout their professional careers.

Identifying the goals, namely the promotion of active and healthy ageing, does not predetermine the specific actions and approaches to achieve them. However, these government strategies and plans being non-binding guidelines by no means diminishes the efforts put into them to define elderly policies. Quite the opposite: setting elderly policy goals through these guidelines and plans has a twofold impact. On the one hand, the setting of goals and priorities determines the size of the older adults target. On the

¹⁸ Regarding the national and Madrid regional plans adopted in 2017 (*National Strategy for active ageing and good care for the elderly 2018-2021* and the *Madrid Regional Strategy to care for the elderly 2017-2021*), see Egea, A. and C. Navarro 2018. *Mayores. Análisis comparado de políticas locales de mayores en municipios de la Comunidad de Madrid*. Madrid: UAM-IDL.

¹⁹ The Strategy advocates "healthy ageing," which means ensuring functional ability, health and equal rights and opportunities for everyone at all stages of life, preserving older people's well-being. This approach to ageing stems from the World Health Organization. In 2016, the 69th World Health Assembly adopted "The Global strategy and action plan on ageing and health (2016-2030)" and the "Decade of Healthy Ageing (2020-2030)."

other, this goal-oriented approach creates a different balance regarding public bodies' involvement depending on the constitutional allocation of powers and legal bases.

For example, the development of the so-called Silver Economy Strategy by the European Commission (EC) would require the transformation of an assistance-oriented Administration focused on addressing age-related needs and risks into a more dynamic one, advancing a framework where ageing provides new economic and employment opportunities.²⁰ This focus on an old age economy would require to reshift assistance-based elderly policymaking to age-friendly policies providing appropriate market conditions to develop innovative services meeting the needs and demands of an increasingly ageing population. Accordingly, reshifting the focus of elderly policies from social assistance to economic development gives rise to a new scenario in the national-regional government levels' relationships and interactions.

Finally, advancing elderly policies towards areas other than pensions and benefits lessens the importance of age as a criterion to determine the addressees of elderly policies.

3. MAPPING ELDERLY POLICIES IN SPAIN'S GOVERNMENT LEVELS

Elderly policymaking is not a distinct area clearly allocated to a government level. Traditionally, the contents of this policy area mainly revolve around social assistance and welfare benefits, giving rise to overlaps between the powers of all three government levels (national, regional and local authorities). On the one hand, the content of social benefits (social assistance matters) falls within the competence of regional authorities under Art. 148(1)(20) of the Spanish Constitution (CE). On the other, any matters related to the pension system or dependency fall within the exclusive scope of national authorities. For instance, solely national authorities are entitled to pass social security legislation under Art. 149(1)(17) CE or to regulate the conditions ensuring equality in the exercise of rights (Art. 149(1)(1)). Also, regardless of the regional provisions on local government, the Spanish Local Government Act (*Ley de Bases del Régimen Local*, LBRL) empowers municipalities with a population over 20,000 to (i) assess and report social needs and (ii) provide immediate care for persons at risk of poverty or social exclusion.

Given the all-encompassing nature of elderly policies, defining their core impacts the relationship between government levels. Accordingly, the ties of elderly policies with retirement pensions and social security benefits shifts the spotlight onto national authorities. Conversely, a broader, more open-ended approach to elderly policies, and

²⁰ Silver Economy Report 2018. Oxford Economics & Technopolis. European Commission. Available at <https://op.europa.eu/s/n8n0>. According to this study, in 2015, the share of European population aged 50 and older was 39%, and accounted for 40.6% of private consumption. However, the authors expect this age group to increase to 42.9% of the total population by 2025, estimating that the Silver Economy's share of private consumption will increase to 44.3% in 2025.

particularly to the provision of social services and benefits, reorients the focus of policymaking to regional and local governments.

Aside from the formal allocation of powers, the actual implementation of elderly policies leads to clashes between different government levels. The Spanish Constitutional Court (TC) has ruled on the competences of national and regional authorities over social services. Broadly, the CE seems to empower national lawmakers in this policy area. This may be due to various reasons, including that the State (i) seems better prepared to protect the general interest or to ensure equality and (ii) has more financial resources. Nonetheless, the TC noted that the national Government's budgetary and fund-related decision-making does not empower the Government to overreach in other policy areas allocated to regional and/or local authorities: "[...] *in case of distinct social issues requiring a global approach, national authorities can be involved, including the use of guidelines and implementing measures, but respecting at all times the competences allocated to regional authorities [...]*" (STC no. 146/1986, of 25 November, legal basis 5).

We recently noticed that the conflicts between government levels can also arise from the formal empowerment of government levels and authorities. See, for instance, the Act on Streamlining and Enhancing the Sustainability of public authorities (*Ley de Racionalización y Sostenibilidad de la Administración*, LRSAL). This Act's second transitional provision empowered regional authorities in the area of social services, requiring regional authorities to take on the powers from municipalities, provincial councils and other local bodies in the field of social services and social reintegration. Broadly, the provision allocated social service powers to regional authorities, regardless of how regional governments could subsequently deal with these competences.²¹

In the area of elderly welfare, the clashes between national and regional authorities evidence how hard it is to strike a balance between (i) laying the foundations for an equal exercise of rights and (ii) the regional powers in the field of social assistance. Therefore, the key is to determine the meaning of "basic conditions" or foundations ensuring equality in age-related matters. The passage of the LAPAD forced the Constitutional Court to take a stance ruling on constitutional appeals (*recursos de inconstitucionalidad*) arising from the clash between national provisions and regional powers.

The Constitutional Court is assuming that laying the basic conditions to ensure the equal exercise of rights qualifies as purpose-driven guidance, thus not intended to homogenize

²¹ The Constitutional Court declared unconstitutional the aforesaid second transitional provision, and other LRSAL articles, in Judgment no. 41/2016, of 3 March. The Court ruled that "*the State* [national authorities] *can only allocate specific local powers, or prevent them from being implemented at a local level, if it has specific competences over the relevant matters or policy area. As for policy areas under the competence of regional authorities, only these authorities can allocate local powers or prevent local authorities from exercising them, subject to the Constitution (Arts. 103(1), 135, 137, 140 and 141 CE), the basic local government rules under Art. 149(1)(18) and, where appropriate, the Estatutos de Autonomía or regional constitutions*" (legal basis 12).

regional legislation. As a result, this duty or power to ensure equality allocated to national authorities under Art. 149(1)(1) CE has no substance and does not give rise to any core or homogenizing legislation.²² Admittedly, regardless of its purpose, the exercise of this power by national lawmakers does restrict territorial diversity. The purpose of this restriction is not quite to achieve homogeneity, but to ensure that there are common foundations that render effective the equal exercise of constitutional rights.²³

These “basic conditions” comprise essential prerogatives and limits framing individual rights.²⁴ Therefore, regarding the social core of elderly policies, these basic conditions allow to arrange a system made up of individual rights and entitlements to the provision of dependency-related benefits.²⁵ Note that social benefits and services usually lack the essential or non-derogable nature of individual rights. Rather, they tend to depend on resource availability and public spending priorities. As a result, requiring regional authorities to abide by these “basic conditions,” as well as providing for cooperation mechanisms between government levels, is indispensable to ensure an equal exercise of social rights. Equality does not mean homogeneity. Aside from a common foundation provided in the LAPAD, the regional legislative frameworks on social assistance are specific to each Autonomous Region.

In other words, arranging social assistance as an individual right based on the LAPAD has required to adapt regional social service legislation to enable social services to qualify as individual rights in dependency-related situations. However, regional authorities have subsequently exercised their powers and adopted implementing frameworks in areas such as funding, enforcement of rights or the delivery of social benefits and services.²⁶

3.1. Regional implementing provisions

Within the constitutional allocation of powers, an extensive approach to elderly policymaking would require regional lawmakers to use various legal bases: urban planning and housing (Art. 148(1)(3) CE), economic development (Art. 148(1)(13) CE),

²² See Constitutional Court Judgments (SSTC) no. 37/1987, of 26 March, and 61/1997, of 20 March.

²³ See STC no. 13/1992, of 3 March, on social assistance pensions.

²⁴ See STC no. 27/2017, of 16 February, and the cited case law.

²⁵ See STC no. 18/2016, of 4 February.

²⁶ The rights’ core or essential content thus refers to the non-derogability of rights for decision-making bodies, not really to the way of managing or funding the benefits and services arising from such rights. Art. 33 LAAD lays down the conditions governing the various copayment schemes, but there is no provision preventing users or recipients from funding the actual services. This article requires users or recipients to copay for care services to meet dependency-related needs, in accordance with Art. 31(1) of the Spanish Constitution. In order for this management and funding system to be compatible with the universality of rights, the LAAD (Art. 33(1)) points out that “*recipients of dependency-related benefits should contribute to the funding thereof. The amount of copayment will depend on the type of benefit, its cost, and the recipient’s income.*” However, Art. 33(4) LAAD also provides that “*all citizens will be eligible for these benefits regardless of income.*”

culture (Art. 148(1)(17) CE), leisure (Art. 148(1)(19) CE), social assistance (Art. 148(1)(20) CE), or health care (Art. 148(1)(21) CE). Also, under Art. 149(3), regional authorities can exercise additional powers not expressly allocated to national bodies. However, national authorities will have competences by default, i.e., over any matters not expressly allocated to regional authorities under the relevant *Estatutos de autonomía*.

This distribution of powers between the various government levels can generate differences in the making and implementation of elderly policies. See below an overview of the regional framework for elderly policies. It mostly covers the *Estatutos de autonomía*, legal provisions on the elderly and regional social service legislation.²⁷

3.1.1. Estatutos de autonomía and elderly provisions

Most *Estatutos de autonomía* mention age-related and elderly policies.²⁸ References to the elderly are largely in two sections. First, these *Estatutos* or regional constitutions refer to the elderly regarding the distribution of powers, and particularly concerning whether each Autonomous Region has taken on competences in social matters.²⁹ Second, those sections including governing principles for welfare and economic policies also refer to the elderly. The *Estatutos* have something in common: they require public authorities to ensure older people's autonomy, with a focus on fostering social integration and enabling their engagement. Aside from autonomy and engagement, the *Estatutos* underline various goals, such as fostering active ageing or intergeneration relations as key elements to achieve those goals.³⁰

The way *Estatutos de Autonomía* define elderly policymaking (i) confirms that these policies have a social core and (ii) requires public authorities to pass implementing provisions in the field in order to achieve full autonomy for the elderly. A few Autonomous Regions provide for specific age-related provisions to implement elderly policies, including the Canary Islands (Act 3/1996, of July 11, on the engagement of older adults and intergenerational solidarity), Andalusia (Act 6/1999, of 7 July, on Care and

²⁷ Obviously, there is more legislation on the elderly exceeding the scope of this study. However, in order to identify the relationships between government levels, the provisions we picked reflect both differences (divergence) and similarities or overlaps (convergence) between the regional frameworks implementing elderly policies.

²⁸ See a list of references to the elderly in regional *Estatutos*, broken down by Autonomous Regions, in Annex 1.

²⁹ This section of the *Estatutos* addresses the elderly and elderly care along with other age groups, e.g., children, younger adults. More specifically, elderly care is closely tied to welfare, although the competence over the elderly is sometimes connected with community or local development matters (Basque Country, Castilla y León, Cantabria, La Rioja). Some Autonomous Regions' *Estatutos* (Catalonia, Galicia, Asturias and Andalusia) provide no specific reference to the elderly in the provisions allocating social assistance and welfare competences.

³⁰ Arts. 40 and 37 of the Catalonia and Andalusia *Estatutos* respectively.

Protection for the elderly) and Castilla y León (Act 5/2003, of 3 April, on the Care and Protection for the elderly in Castilla y León).

These pieces of regional legislation on the elderly are mere guiding frameworks. However, they do show certain differences regarding the recipients of benefits or those eligible for, or entitled to, social rights (i.e., the right holders). As for the Canary Islands, the regional provision is addressed to (i) locals aged 60 and older; (ii) locals under the age of 60 who are over the retirement age due to their job; and (iii) pensioners over 50 with physical, mental or sensory disabilities, as long as their personal or social conditions make them eligible for social benefits. In contrast, the legislation passed in Andalusia and Castilla y León covers seniors aged 65 and older.

The purpose of these provisions is preventing the ageing process from undermining older adults' autonomy and full integration in the social, political and economic system. Nevertheless, there are few measures aimed at achieving this goal. Regional lawmakers tend to simply provide a general framework laying down the priority areas to ensure older adults' well-being: health care, promoting leisure and cultural activities and, particularly, housing, clearly resembling the constitutional framework. As for housing, regional provisions on the elderly require that residential facilities have internal rules of procedure previously adopted by the competent regional body.³¹

3.1.2. Regional provisions on Welfare Services

Whereas the *Estatutos de autonomía* and the regional provisions on the elderly basically set out the governing principles for socioeconomic policies in general or elderly-related measures in particular, regional social service legislation further specifies the types of benefits and services comprised by such policies and measures. After the passage of the Act on the Promotion of Personal Autonomy and Care for dependent persons (LAPAD), this legal framework has been updated by regional legislatures and authorities. Under the current updated legal framework, these benefits and services now qualify as a set of individual rights.³²

Despite the impact of the LAPAD, the resulting frameworks are not homogeneous between Regions. Differences are twofold. First, social service provisions differ in terms of coverage and type of benefits. Second, they also differ in how services and benefits are

³¹ As for Andalusia, the regional provision defines the rights of the elderly in greater detail: (i) privacy and non-disclosure of personal data stored in any files or records; (ii) physical and moral integrity and a dignified treatment; (iii) non-discrimination on grounds of personal or social conditions; (iv) the right to information (the residential homes' internal rules of procedure) and participation; (v) the right to individualized care; (vi) health care, medical care and medicinal products, technical-scientific and assistance-based treatments; and (vii) interpersonal relationships; (viii) voluntary commitment; (ix) protection of the residents' assets (Arts. 21 and 22 of Act 6/1999).

³² Castro Argüelles, M. A. (2017). La nueva ley de servicios sociales de Andalucía: Una presentación. *FORO. Revista de Ciencias Jurídicas y Sociales, Nueva Época*, 19(2) doi:10.5209/FORO.55376.

arranged as individual rights, the difference being (i) the extent to which they are secured or guaranteed and (ii) the degree of enforceability vis-à-vis competent authorities.

As for the extent to which services and benefits are guaranteed (i.e., the level of assurance regarding the entitlements), the differences between Autonomous Regions are not mainly about the content or actual wording of the provisions. Rather, the most remarkable differences relate to the subsequent implementation of the services and benefits through the regulatory and soft law instruments framing elderly policies. As for the regulatory instruments, the regional social service framework is implemented through “social service packages” adopted by regional governments. These packages provide a comprehensive definition of the benefits, programs and actions covered by the regional social services and their regime. In broad terms, these packages specify the type of benefit (technical services, economic benefits, technological assistance), eligibility requirements and, most importantly, whether these benefits and services are guaranteed. These are multi-year packages, and they allow to clearly determine if the benefits and services qualify as individual rights. Therefore, these packages include (i) *guaranteed benefits*, which differ from the so-called (ii) *ancillary or non-guaranteed benefits*. The eligibility and provision for (ii) above depends on the availability of budget funds and political decision-making.

There are also “social service maps” supplementing these implementing provisions. Social service maps arrange benefits and services operationally and on a territorial basis (geographically). Generally, services are arranged based on whether they are basic or specialized. The latter are more complex from a technical standpoint and require more resources. Furthermore, the territorial arrangement or organization (i) allows for “zoning” the provision of services and (ii) provides for the various territorial units used to manage the resources involved in regional social service systems.³³

Finally, regarding soft law instruments, regional social service legislation also provides for the adoption of strategic plans framing the implementation of public policies by (i) setting out management principles and objectives; (ii) providing quality instruments; (iii) promoting coordination between government levels and administrative units; and (iv) agreeing on an action plan ensuring the effective enjoyment of rights enshrined in regional provisions.

³³ The territorial arrangement of social services is central for the regional government level. Despite the principles of devolution of powers and proximity, there are noticeable differences between Autonomous Regions regarding territorial arrangements. The regional mapping of social services is based on basic areas or zones, which can be municipalities, counties, districts or municipal areas with a given number of residents. Although it may have an impact on the way social services are provided, a thorough analysis of this territorial structure would exceed the scope of this work.

3.2. Categorization of regional legal frameworks for elderly services

Self-evidently, the formal acknowledgment or enshrinement of individual rights does not necessarily entail that the right holders effectively enjoy them. Also, keep in mind that bringing judicial proceedings to claim any guaranteed services and benefits can be too expensive or burdensome for eligible individuals, and that judicial review may be late. Note that this has a particularly significant impact on older adults. Thus, the aforesaid regulatory and guiding instruments in the field of social services are essential to assess the level of assurance provided by the regional framework for elderly services. These supplementing instruments, however, are not homogeneously developed. Not all Autonomous Regions have provided for social service packages or strategic plans. Indeed, some regional governments have failed to update their legal frameworks after the passage of the LAPAD.³⁴ The circumstances discussed above on the varying level of assurance of elderly-related rights (or, in other words, the extent to which these acknowledged rights are actually secured for right holders to exercise them) give rise to a threefold categorization of regional social services.

Category I. Acknowledgment of individual rights in regional provisions plus regulatory and guiding instruments (Aragón, Illes Balears, Castilla y León, Castilla-La Mancha, Catalonia, Comunitat Valenciana, Basque Country, La Rioja and Navarre).

This category covers all Autonomous Regions that either expressly provide elderly rights (e.g., rights and obligations of care center and nursing home residents) or include elderly-related actions (regarding home care, remote assistance or housing) in the list of elderly-related benefits and services. Additionally, the regions falling under this category have all adopted provisions to implement the social service system (service packages, organizational maps and strategic plans).

This implementation of regional social service legislation through guidelines and implementing provisions plays a major role in age-related matters for three reasons. First, the content of social rights set out in regional provisions does not always target the elderly as a group requiring special protection or with special needs.³⁵ Second, regional provisions refer to social rights, but they do so generically and without specifying any actions or eligibility requirements. Accordingly, listing various rights in social service provisions does not always entail that potential recipients or right holders may actually enforce them or claim those rights and benefits vis-à-vis public authorities. Third,

³⁴ See each Autonomous Region's main social service framework in Annex 2.

³⁵ Aragón Regional Act 5/2009, of 30 June, on Welfare Services, provides several generic benefits that, despite being generic, can help implement elderly policies (the right of access to information, analysis, diagnostic and guidance services, as well as to home care services and support for carers or caregivers (Art. 36)). Other Regions, like Catalonia, also provide for the rights and obligations of the elderly in a more individualized and thorough way, providing for the rights of day care service recipients and nursing home residents (Arts. 12 and 13 of Act 12/2007, of 11 October, on Welfare Services). See, along these lines, Illes Balears Regional Act 4/2009, of 11 June, on Welfare Services, specifically providing for day care and night care services along with home care, technological assistance and remote assistance (Arts. 21 and 23).

regional social service legislation expressly refers to social service packages. These packages or *carteras/catálogos de servicios sociales* must determine the specific actions to be conducted by public authorities arising from an acknowledged right. But, primarily, they must define whether the relevant services and benefits qualify as individual rights or otherwise remain subject to regional governments' discretion and resource availability.³⁶

In elderly-related matters, the social rights provided in regional legislation refer both to (i) services allowing to identify specific needs (right to information, analysis, diagnostic and guidance or advisory services, as well as the right to be aware of the services and benefits included in the system) and (ii) the actual provision of basic services (home care, remote assistance, day care and residential care or assisted living). In most regional provisions, these benefits and services qualify as individual rights or essential benefits and services, i.e., enforceable entitlements by anyone fulfilling the eligibility requirements and with sufficient budget allocation to secure them. Concerning budget funds, regional legislation provides that any budget allocation to social services may be extended.³⁷

The fact that social services be considered essential does not determine that they should be free. Social services will not be free unless the recipient is a dependent person, despite that there may be more potential recipients. Moreover, co-payment schemes are widely applied to some of these services, like residential care or nursing homes.³⁸

Regarding the content of benefits and services, it is worth underlining that many packages or *carteras/catálogos* include a new independent category: services aimed at promoting active ageing and preventing old-age dependency. The benefits and services related to active ageing are mostly ancillary, non-secured services.³⁹ Also, the most recent provisions include services targeted not only to users or recipients, but also to care professionals within the public welfare system.⁴⁰

In terms of content, the implementation of social services is not homogeneous. However, the actions required from public authorities are provided in detail, as well as the procedure

³⁶ There are various wordings to designate the benefits and services qualifying as individual rights both in regional legislation and social service packages, including “secured” or “guaranteed benefits,” “fundamental benefits” or “essential benefits and services.” All of these designations contrast with the so-called “ancillary benefits” or “*prestaciones complementarias*.”

³⁷ Art. 60 of Catalonia Regional Act 12/2007, of 11 October, on Welfare Services. Art. 32 of the Comunitat Valenciana Regional Act 3/2019, of 18 February, on Inclusive Social Services.

³⁸ See Aragón Regional Decree 143/2011, of 14 June, enacting the Aragón Social Service Package or *Catálogo de Servicios Sociales de la Comunidad Autónoma de Aragón* and Illes Balears Decree 66/2016, of 18 November 2016, adopting the Illes Balears Social Service Package for 2017-2020 or *Cartera Bàsica de Servicios Sociales 2017-2020*.

³⁹ See the Castilla y León social service package or *Catálogo de servicios* (Decree 58/2014, of 11 December).

⁴⁰ Comunitat Valenciana Regional Act 3/2019, of 18 February, on Inclusive Social Services (Arts. 12 and 13).

to require their provision (i.e., enforce them) and the need for allocating sufficient budget funds, thereby further securing the exercise of social rights for the elderly.

Category II. Acknowledgment of individual rights in regional provisions but no implementing or guiding instruments (Andalusia, Cantabria, Canary Islands, Asturias, Extremadura, Galicia)

This category covers those regions whose social service acts acknowledge certain elderly benefits as “essential” but still have not adopted a social service package (in Spanish, *cartera* or *catálogo*). The formal acknowledgment of individual rights in regional social service provisions requires that the subsequent service packages take into account that some social rights need to be secured. However, the provisions acknowledging these rights fail to specify the minimum content or scope of actions included in the acknowledged rights. In any case, there is a specific and elderly-related content provided for these services (rights and obligations of residential care users, the right to home care and remote assistance), indicating that elderly needs require special protection under Category II frameworks.

The limited scope and coverage of social rights acknowledged in Category II frameworks is due to the reference included in regional provisions. These provisions call for the adoption of a social service package, which must specify the eligibility requirements, management approaches and whether the relevant benefits and services are essential or ancillary. Within Category II, regional legislation on social rights makes a distinction between guaranteed or secured benefits and ancillary benefits, subject to the availability of budget funds. Nevertheless, all of these entitlements require a more comprehensive regulation in the service packages. In the absence of this comprehensive regulation, the specific political actions securing these social entitlements will depend on the prevailing political and economic circumstances.

Just like Category I frameworks discussed above, regional legislation under Category II provides as individual rights a set of services mostly relating to the access to the welfare system and diagnostic services, in order for individuals to subsequently pick a “social service itinerary” within the regional system.⁴¹ In this connection, specifying the actions covered or entailed by social services could be considered essential to render effective the rights of access to the system.

There are major overlaps between Category II regional frameworks regarding elderly-related social rights: remote assistance services, home care, preventive services, integral care for persons at risk of social exclusion or care services in day centers and nursing

⁴¹ Arts. 9 and 10 of Andalusia Regional Act 9/2016, of 27 December, on Welfare Benefits; Art. 6 of Cantabria Regional Act 2/2007, of 27 March, on Social Rights and Services.

homes.⁴² On top of that, Category II social service acts often include a set of specific rights and obligations for nursing home residents and users of residential facilities.⁴³

Category III. No acknowledgment of individual rights in regional provisions and no implementing or guiding instruments (Madrid, Murcia).

Category III frameworks apparently provide the lowest level of assurance regarding the exercise and enforcement of elderly-related social rights. This is because (i) the legal frameworks were adopted before the passage of the LAPAD; and (ii) the absence of a service package or *catálogo* like the ones provided in regional frameworks under Category I. With regard to (i) above, the LAPAD entailed a transformation regarding the acknowledgment as individual rights of certain services and benefits for dependent persons. The LAPAD approach had a tremendous and noticeable impact on all the subsequent pieces of regional legislation. Regional acts have replicated the “rights acknowledgment approach” giving rise to secured benefits and services. However, note that the level of assurance can be lower in legal frameworks only made up of social service provisions, i.e., frameworks with no implementing instruments like service packages and social service maps. Category III regional legislation on Welfare Services does not formally acknowledge social service rights. It neither expressly requires to allocate budget funds to enable the effective enjoyment of rights and entitlements by right holders and recipients.⁴⁴

Regarding elderly services, Category III frameworks provide elderly care as a governing principle of welfare policymaking.⁴⁵ The aims of elderly care under this category are, yet again, promoting older adults’ well-being and ensuring their full social integration. However, this “non-acknowledgment approach” suggests that, not being guaranteed as individual rights, benefits and services depend on economic cycles and political decision-making.

The varying regulatory density between regional social service frameworks (i.e., the differences in terms of comprehensiveness and level of assurance) could suggest that the effective exercise of social rights is secured to different extents in the various Autonomous Regions. Nevertheless, from a critical standpoint, one could argue that the existing differences between regional frameworks can be merely formal and not

⁴² Art. 42 of Andalusia Regional Act 9/2016, of 27 December, on Welfare Services. Art. 6 of Cantabria Regional Act 2/2007, of 27 March, on Social Rights and Services.

⁴³ Art. 11 of Canary Islands Regional Act 16/2019, of 2 May, on Welfare Services. Art. 11 Andalusia Regional Act 9/2016, of 27 December, on Welfare Services.

⁴⁴ Art. 19 of Madrid Regional Act 11/2003, of 27 March, on Welfare Services (LSSMAD) provides for a steady allocation of funds to achieve universal welfare coverage. Also, Art. 37 of Región de Murcia Regional Act 3/2003, of 10 April, on the Social Service System (LSSMUR) mentions that any funds should be used to enable the exercise of regional powers.

⁴⁵ Art. 12 LSSMUR is worded as follows: “Elderly-specific services will be aimed at achieving the greatest possible well-being for older adults as well as their full autonomy and social integration.” Art. 23 LSSMAD provides the main lines of action for social services.

substantial. If so, they would not necessarily give rise to differences in the actual delivery of social services by regional and local authorities. As stated above, listing social rights in specific “social service packages” or *catálogos* further secured the rights. But these packages may very well adopt a restrictive approach to the delivery of the service, its coverage or its scope. Additionally, regional legislation on Welfare Services allows for amending these packages before the end of their 4-year period of validity. Therefore, the legal framework’s impact on the elderly policies ultimately implemented at the various government levels could be called into question. In other words: if the “social service packages” can (i) provide for a restrictive provision of services and (ii) be amended, the legal framework could have a lesser impact on the actual policies.

See below a correlation analysis between the aforesaid legal framework categories and some basic metrics related to the social core of elderly policies. This social core can be used as a point of comparison, since it includes overlapping services and benefits between the various framework categories (remote assistance, home care and residential care). Table 1 shows the average coverage ratios⁴⁶ for each category.

Table 1. Coverage ratio of social benefits and services for the elderly (2018).

CATEGORY		REMOTE ASSISTANCE	HOME HELP	DAY CARE CENTERS (number of places out of adults over 65)	NURSING HOMES (number of places out of adults over 65)
CATEGORY I	Average	8.4	4.5	.96	5.2
	N	9	9	9	9
	Standard deviation	4	1.9	.24	1.6
CATEGORY II	Average	5.4	3.9	1.4	4.3
	N	6	6	6	6
	Standard deviation	5.9	1.6	.81	1.5
CATEGORY III	Average	10.7	5.7	1.1	2.9
	N	2	2	2	2
	Standard deviation	7.4	4.9	.16	2.1
Total	Average	7.6	4.4	1.1	4.6
	N	17	17	16	17

⁴⁶ The coverage ratio represents the ratio between older adults aged 65 and older receiving the benefit or service and the total population in each Autonomous Region. The data relating to the demographic variables (demographic indicators) have been obtained from the National Statistics Institute (INE). The data relating to coverage ratios have been obtained from the Institute for the Elderly and Social Services (IMSERSO). See *Servicios Sociales dirigidos a personas mayores en España*. December 2018.

Standard deviation	5.1	2.1	.51	1.7
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Note: N represents the number of cases. Source: Institute for the Elderly and Social Services (IMSERSO).
Own elaboration

We found considerable diversity regarding social service coverage at a regional level. However, note that the varying coverage ratios are not always associated with a different regulatory density or level of assurance examined in the threefold categorization discussed above. Broadly, Category I regions provide slightly greater coverage than those under Category II, except for the number of places in day care centers (0.96 in Category I regions). Note that regions under Categories I and II do not always provide greater coverage than Category III frameworks. Remarkably, the coverage ratio for remote assistance services is significantly higher in Category III regions. The reason for this could be the outlying remote assistance value for the Region of Madrid (15.97%).

We should also focus on the diversity results within each category. Standard deviation figures reflect the heterogeneity within each category. We found lower heterogeneity between Autonomous Regions under Category I compared to the other two categories except for the metrics on day care centers. In sum: those regions where social rights are more densely regulated have less internal variability. Thus, greater regulatory density suggests lesser differences between regions regarding the delivered social services.

As discussed before, more regulation does not mean greater homogeneity in the rules governing the provision of social services. Table 2 below includes information on social service users' contributions, thereby allowing to examine potential relationships between the categorization of legal frameworks and recipients' eligibility requirements and access conditions.

Table 2. Indicators for the provision of social services to the elderly (2018).

CATEGORY		REMOTE ASSISTANCE (cost per recipient in €)	S.A.D. (% contribution per recipient)	NURSING HOMES (coverage ratio of public places)
CATEGORY I	Average	153.7	19	3.1
	N	9	8	9
	Standard deviation	46.6	.06	1.4
CATEGORY II	Average	207.1	31	2.5
	N	6	5	6
	Standard deviation	55.7	0.35	1.6
CATEGORY III	Average	190.1	21	1.6
	N	2	2	2
	Standard deviation	27	.13	.3

Total	Average	176.8	23	2.7
	N	17	15	17
	Standard deviation	52.7	.2	1.4

Note: N represents the number of cases. Source: Institute for the Elderly and Social Services (IMSERSO).
Own elaboration

Our findings and results allow to further qualify some of our previous remarks. Although Category I regions had a lower coverage ratio in remote assistance and home care services, they require the lowest contribution from users or recipients (EUR 153.7 per recipient and 19% of the social service cost, respectively). Furthermore, regions under Categories I and II also offer more public places or open spots than Category III regions. The results might be due to the fact that these benefits qualify as essential services under Categories I and II frameworks, and thus funded by regional budgets, mostly in Category I regions. However, note that many times, benefits only qualify as essential and free if, prior to the provision of the benefit, recipients are acknowledged as dependent persons.

The previous findings suggest that the differences in social services between Autonomous Regions are due to varying regulatory densities. Nonetheless, keep in mind that the analysis covers a very limited time span, so we must be cautious when interpreting the results as trends. We found that greater coverage is not always correlated with a more comprehensive regulation of social rights. We did find, however, that the more regulatory density, the greater homogeneity in governments' actions and the lesser contribution from users or recipients to the cost of social services. Our results also indicate that, despite the overlaps and common wordings between guiding principles for elderly policies, both (i) the actual benefits and services guaranteed by public authorities; and (ii) their actual impact on the elderly show major differences depending on the region.

4. CONCLUDING REMARKS

Traditionally, elderly policies have been made up of an assistance-based core of benefits and services provided by national authorities. The basis for this was that the elderly faced greater risks and thus needed greater protection. On the one hand, older adults lose purchasing power because they retire. On the other, they tend to require greater care and assistance, which has defined the needs of the group altogether and the content of elderly policies.

However, the growing ageing process, and its complex interactions with other demographic and economic trends, has encouraged authorities and scholars to re-examine the content of elderly policies. The all-encompassing nature of elderly policies is mostly due to institutional aspects. Allocating elderly policymaking powers to government levels other than national authorities (i.e., local and regional bodies) has invigorated and extended the contents of elderly policies. First, international organizations advance programs—e.g., active ageing and silver economy initiatives—that exceed the traditional,

assistance-based core of elderly and age-related policies. Second, the allocation of social welfare powers to Autonomous Regions have given rise to a myriad of regional rulemaking bodies and authorities. At a regional level, the passage of social service legislation and its subsequent implementation through social service packages creates (i) a complex scenario from a legal standpoint (regarding, for instance, the enforceability of benefits and services); and (ii) a heterogeneous context for the outcomes of policymaking (e.g., regarding the acknowledgment of individual rights or coverage ratios).

Ultimately, the allocation of elderly policymaking powers to the various government levels has an impact on the content of the actual policies. The exercise of social welfare powers by Autonomous Regions has given rise to various legal frameworks. There are similarities between regions regarding both the enactment of these frameworks and the results thereof. As for the results, regional social service legislation is implemented by providing that benefits and services should qualify as individual rights, thus securing the effective exercise thereof by users or recipients. First, citizens are entitled to require competent authorities to deliver the services, even by bringing judicial proceedings. Second, welfare benefits are secured both financially, by allocating sufficient budget funds, and from an organizational standpoint, relying on the necessary cooperation and coordination between public authorities to secure the exercise of rights.

With regard to the enactment of these frameworks, the steady transformation of benefits and services into individual rights could be construed as a regional governments' reaction to the national lawmakers' decision to arrange dependency-related services as individual rights (after the passage of the LAPAD). Defining social services as individual rights is a natural expression of national authorities' powers to set out the basic conditions to ensure that rights are exercised on an equal footing; defining social services and benefits as individual rights is a way of ensuring that a minimum core of these benefits and rights is actually enforceable. This approach by regional lawmakers can be interpreted as an attempt to define the scope of regional powers in the field of social assistance. The Spanish Constitutional Court ruled that neither the funding nor the legal definition of welfare benefits can affect the scope of regional powers. However, when regional lawmakers define the specific benefits and services provided by regional authorities as individual rights, they are obviously trying to inextricably link the social core of elderly policies to regional governments. By doing so, regional governments seek to prevent potential advances or overreaches from national lawmakers that ultimately affect the substance of welfare policymaking by regional authorities.

Therefore, regional rulemaking runs between two boundaries. First, the national lawmaker's definition of the basic conditions required to ensure that welfare and elderly rights are exercised on an equal footing. Second, a ceiling, i.e., judicial review ensuring compliance with the principle of non-discrimination on the basis of personal or social conditions, particularly age. As discussed before, this principle requires public authorities to justify any differentiation or unequal treatment based on age whilst providing for any necessary compensation. Regional policymaking regarding the elderly runs between

these two limits. Regional authorities define and strengthen their own scope of welfare powers by arranging and qualifying social benefits and services as individual rights.

In spite of these “rights acknowledgment approaches,” elderly policies do not give rise to homogeneous results between regions. There are significant differences regarding (i) the specific actions to be taken within the sphere of social services, as well as concerning (ii) whether such services qualify as essential or as dependent on resource availability. Although the most important elderly services are provided with similar wordings (the provisions refer to home care, day care centers and nursing homes or remote assistance), there are major differences between regions regarding the specific implementation and delivery of these services as well as the coverage thereof.

Our findings suggest that the implementation of social service legislation through packages providing for secured benefits is associated with greater homogeneity in the application of elderly policies. Additionally, this comprehensive implementation is correlated with a lesser payment from users and recipients. Defining the benefits as essential or ancillary does not pre-determine that they be free or subject to co-payment schemes. But the requirement that essential welfare benefits have guaranteed funding can have an impact on this. Still, the coverage ratio results greatly differ between regions, and they do not seem linearly correlated with a more or less comprehensive implementation of social service packages or *catálogos*. Consequently, adopting a “rights acknowledgment approach” does not ensure the same outcome in the application of elderly policies throughout the various regions.

In sum, the allocation of elderly policymaking powers to one government level or the other does have an impact on the policies’ contents. After examining how these policies are defined, we found factors giving rise to both similarities or overlaps (convergence) and differences (divergence) regarding the outcomes of the relevant policies. Remarkably, there are similarities arising from (i) the establishment of basic conditions to ensure that the relevant rights are exercised on an equal footing; (ii) the principle of non-discrimination on grounds of age; and (iii) the incentive to provide that social benefits and services qualify as individual rights. The following are the most significant differentiating factors: (i) the actual implementation of elderly policies; and (ii) heterogeneity in each region’s implementation and application of elderly policies due to the complex interactions between the ageing process and the socioeconomic system.

Annex 1. References to the elderly in *Estatutos de autonomía*

REGION	FUNDAMENTAL RIGHTS	ALLOCATION OF POWERS	GUIDING PRINCIPLES FOR POLICYMAKING
CATALONIA	Article 18.		Article 40.
ANDALUSIA	Articles 14 and 19.		Article 37.
ARAGÓN		Article 71.	Article 24.
CASTILLA-LA MANCHA		Article 31.	
CANARY ISLANDS			
EXTREMADURA		Article 9.	Article 7.
ILLES BALEARS		Article 30.	Article 16.
COMUNIDAD DE MADRID		Article 26.	
CASTILLA Y LEÓN		Article 70.	
BASQUE COUNTRY		Article 10.	
GALICIA			
ASTURIAS			
CANTABRIA		Article 24.	
LA RIOJA		Article 8(1).	
MURCIA		Article 10(1).	
COMUNITAT VALENCIANA		Article 49.	Articles 10(3) and 13(3)
NAVARRRE		Article 44.	

Annex 2. Implementation of regional frameworks on Welfare Services⁴⁷

REGION	SOCIAL SERVICE ACT	SOCIAL SERVICE PACKAGE	IMPLEMENTING INSTRUMENTS
ANDALUSIA	Regional Act 9/2016, of 27 December, on Welfare Services		Order, of 5 April 2019, regulating and adopting the Andalusia Social Service Map
ARAGÓN	Regional Act 5/2009, of 30 June, on Welfare Services	Decree 143/2011, of 14 June, adopting the Aragón Social Service Package	Decree 55/2017, de 11 de abril, adopting the Aragón Social Service Map
ASTURIAS	Regional Act 1/2003, of 24 February, on Welfare Services		Decree 108/2005, of 27 October, adopting the Asturias Social Service Map
ILLES BALEARS	Regional Act 4/2009, of 11 June, on Welfare Services	Decree 66/2016, of 18 November 2016, adopting the Illes Balears Social Service Package for 2017-2020	
CANTABRIA	Regional Act 2/2007, of 27 March, on Social Rights and Services		Order EMP/51/2009, of 15 May, adopting the Cantabria Social Service Map
CANARY ISLANDS	Regional Act 16/2019, of 2 May, on Welfare Services		
CASTILLA-LA MANCHA	Regional Act 14/2010, of 16 December, on Welfare Services	Decree 3/2016, of 26 January, establishing the Castilla-La Mancha Service and Benefit Package for the Dependency Welfare System	
CASTILLA Y LEÓN	Regional Act 16/2010, of 20 December, on Welfare Services	Decree 58/2014, of 11 December, adopting the Castilla y León Social Service Package	

⁴⁷ Table 2 does not include any “packages” that have not been adopted by the competent body or lacking minimum references to whether the benefits and services qualify as essential or ancillary. Table 2 neither includes “packages” that are mere references to the LAAD (national provision) or lists of services that simply disclose or report the service but fail to legally define it.

CATALONIA	Regional Act 12/2007, of October, on Welfare Services	Decree 42/2010, of 11 October, adopting the Social Service Package	
COMUNITAT VALENCIANA	Regional Act 3/2019, of 18 February, on Inclusive Social Services	Decree 59/2019, of 12 April, establishing the Valencia Social Service System	
EXTREMADURA	Regional Act 14/2015, of 9 April, on Welfare Services		
GALICIA	Regional Act 13/2008, of 3 December, on Welfare Services		
COMUNIDAD DE MADRID	Regional Act 11/2003, of 27 March, on Welfare Services		
REGIÓN DE MURCIA	Regional Act 3/2003, of 10 April, adopting the Social Service System		
NAVARRRE	Regional Act 15/2006, of 14 December, on Welfare Services	Decree 30/2019, of 20 March, amending Decree 69/2008, of 17 June, adopting the General Social Service Package	Decree 32/2013, of 22 May, adopting the implementing provisions for the Act on Welfare Services regarding the Programs and Funding of Basic Social Services
BASQUE COUNTRY	Regional Act 12/2008, of 5 December, on Welfare Services	Decree 185/2015, of 6 October, adopting the Basque Social Service Package	Social Service Strategic Plan for the Basque Country 2016-2019
LA RIOJA	Regional Act 7/2009, of 18 February, on Welfare Services	Decree 31/2011, of 29 April, adopting the La Rioja Social Service and Benefit Package	

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