



Co-ordination of Social Security in the Council of Europe:

Short Guide

A report produced by

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and
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COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

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Foreword

The Council of Europe runs an extensive programme of regional and bilateral activities in the field of social security co-ordination, targeting Central and Eastern Europe and South East European countries in particular, with the aim of promoting its legal instruments and developing a complete pan-European social security co-ordination network.

This short guide is part of that effort; it provides an overview of the social security co-ordination instruments of the Council of Europe, explains the ideas lying behind them and places them in the context of the different approaches to social security co-ordination.

The management of both legal and irregular migration has become an ever greater political challenge. Immigrants face many obstacles when they attempt to claim their rights to social protection. Hence, there is a growing need to intensify the co-ordination of social security systems between host and sending countries. The Council of Europe co-ordination instruments aim to reduce some of the disadvantages of moving from one state to another, particularly in respect of long-term benefits such as old age pensions. Their provisions do not oblige states to alter the substance of their social security laws. Instruments of co-ordination only affect the situation of migrants, for example by obliging states not to treat migrants differently from nationals.

The Council of Europe conventions aimed at co-ordinating the provisions of national social security systems are the following: two European Interim Agreements on Social Security Schemes (one dealing with old age, invalidity and survivors and the other dealing with schemes other than for old age, invalidity and survivors), the European Convention on Social and Medical Assistance and the European Convention on Social Security (together with its Protocol). It is the task of the Committee of Experts for Co-ordination in the Social Security Field to promote co-ordination of social security schemes through these conventions.

The 8th Conference of European Ministers responsible for Social Security, held in Bratislava in May 2002, gave new impetus to the work of this Committee, as it recommended promoting knowledge and ratification of those Council of Europe legal instruments aimed at facilitating the integration of migrant workers, and in particular those which aim at creating a complete pan-European social security co-ordination network, namely the European Interim Agreements on Social Security Schemes and the European Convention on Social Security.

Furthermore, the Ministerial Conference recommended strengthening of the Council of Europe's role in the exchange of information on social security co-ordination and the sharing of experience and practices between member states, as well as its role in observing developments in the field of social security co-ordination across Europe.

We do not claim to present in this guide a complete picture of this rather complex topic, but simply to explain the legal instruments in an understandable manner. We would like to thank our two social security experts, Jason Nickless and Helmut Siedl, for all their hard work in preparing this guide.

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November 2003

INTRODUCTION

This short guide aims to provide its readers with a detailed introduction to the social security co-ordination instruments of the Council of Europe. It begins by describing the basic philosophies behind social security co-ordination; why it is needed and how it may be achieved. It then deals with social security co-ordination in practice by looking at the range of legal instruments available and briefly introducing some of the agreements that are currently in force within Europe. In its subsequent chapters this short guide then deals with the following Council of Europe provisions on social security co-ordination:

- the European Interim Agreements on Social Security
- the European Convention on Social and Medical Assistance
- the European Convention on Social Security
- the Model Provisions for a Bilateral Social Security Agreement
- the European Social Charter

CHAPTER ONE

SOCIAL SECURITY CO-ORDINATION IN THEORY

INTRODUCTION

This chapter provides an introduction to the theory of social security co-ordination. It explains the aims of social security co-ordination and why it is needed, it also covers the basic principles of co-ordination and the range of legal instruments available to ensure effective co-ordination. In this chapter you will find the following sections:

- 1.1 The territoriality and national diversity of social security
- 1.2 The risks of migration and national social security systems
- 1.3 International social security law
- 1.4 The four basic principles of social security co-ordination
- 1.5 The legal instruments of social security co-ordination
- 1.6 The hierarchy of international instruments
- 1.7 The terminology of social security

1.1 The territoriality and national diversity of social security

Social security is essentially a creation of national law. The amounts of benefit, conditions of entitlement and duration of payment within social security schemes are set down by national law. These schemes are administered by national bodies governed by national rules and regulations. Individual disputes relating to entitlement to benefit or the amount of benefit are resolved by national courts or tribunals. The scope of social security schemes is therefore traditionally confined to the territory of a particular state or even a region within a state. This confined territorial scope may lead to national rules that provide that only nationals of the state will be entitled to benefits or benefits will only be paid to those who reside within the geographical boundaries of the state.

The territorial nature of social security means that national or regional social security schemes have evolved in their own way. They reflect the economic, political, social, geographic and cultural history of each territory. Although one territory may be influenced by the example of another no two territories have exactly the same system of social security. For example State A may base entitlement to a particular social security benefit, such as invalidity pension, on residence. State A would then only pay invalidity pensions to those who were legally resident in its territory when they became invalid. State B may base entitlement to the same type of benefit on employment, only paying that benefit to those who were employees when the invalidity occurred. State C may base entitlement to this pension on the performance of economic activity, only paying it to those who were either engaged as employees or self-employed persons when they suffered their invalidity.

The conditions of entitlement to a particular benefit may also differ from territory to territory. For example State A mentioned above may not pay out any pension until a person can show that they have resided within the territory for at least 20 years. State B may not pay

any benefit until a person has been employed within the territory for 15 years, whilst State C may demand 10 years of economic activity within its geographical borders before any pension is paid.

The way in which the invalidity benefit is calculated may also vary between States A, B and C. For example State A may pay a person a fixed amount for each year they have lived within that State. State B may pay a fixed basic amount and then increase this amount for every year that a person has been employed within its territory. State C may pay the invalid a fixed percentage of his previous income, this percentage increasing for every year that that person performed an economic activity within this State.

The manner in which invalidity benefits are financed may also be different in States A, B and C. State A may finance its invalidity benefit from a tax applied to all residents, whilst State B may apply a social security contribution of 6% to any money earned from employment. State C may finance invalidity pensions from a social security contribution of 5% levied on all income from economic activity.

The territorial nature and diversity of social security can cause problems when people migrate from one state to another. Migration in the context of social security should be understood in a very broad sense. It covers those people who decide to leave one state and move permanently to another. It also covers those who live in one state but work in another, returning daily, once a week, once a month or just once a year. It also covers those who live in one country, work in a different country and are self-employed in yet another country. Those who are sent by their employer to go work in another country on a temporary basis are considered as migrants in the social security sense too. In fact in this context 'migration' covers any situation where a person crosses over a border. Even tourists and holiday makers may be considered migrants for social security purposes. The territorial and diverse nature of social security creates potential social security problems for both the migrants themselves and for the national social security systems between which they move.

1.2 The risks of migration for migrants and national social security systems

Migrants may be at risk of being treated differently from the nationals of the state to which they move. This may be because that new state will not pay benefits to non-nationals.

The territoriality of social security means that those who decide to make a long-term move to another country may lose some of the social security rights they have acquired in their home state. For example they may lose all credit for the periods of residence, employment or economic activity they have acquired in their home state as these periods may not be counted under the national social security law of their new state. This is particularly important in relation to pensions for old age or invalidity where entitlement to and the amount of pension depend upon periods of recognised residence, employment or economic activity.

It may be that people who move to a new country will lose the right to payment of a benefit they have already been granted in their home state. For example someone retires in State A and is granted a full old age pension but that person decides they want to live in a warmer country, State B. The territorial nature of social security would mean that under the national law State A does not have to pay pensions to people who leave in order to live in another

country. Upon arriving in State B the pensioner will probably be unable to rely upon the national law in State B to pay him/her a pension there because the periods of residence, employment or economic activity s/he fulfilled in State A will most likely not be recognised under the national law of State B.

Consider also the situation of a migrant who lives in State A but is employed in State B. Invalidity benefit in State A is paid to those who reside within its territory and is financed from a tax payable by all residents. In State B invalidity benefit is paid to all employees and financed from a social security contribution levied upon wages. The person in our example would be covered by both countries and so, although theoretically entitled to benefits in both states, will have to pay towards the benefit in both states. This is referred to as a 'positive conflict of law'. If the situation is reversed and the person is employed in State A but lives in State B s/he will not be covered by either system and should s/he become invalid s/he will not receive any benefit at all. This is described as a 'negative conflict of law'.

Migration also creates problems for the national social security systems themselves. Negative conflicts of law mean that people may escape their social security obligations, this may be done accidentally or deliberately. Differences between states as regards tax laws as well as social security contributions mean that people can play one national system off against another thereby avoiding their liabilities and obligations.

1.3 International social security law

The reader will recall that above it was said that the substance of social security is laid down in national law. However, this national law can be very heavily influenced by international law. International social security laws may be divided into harmonising instruments and co-ordinating instruments.

Harmonising instruments will oblige states to change the substance of their social security law. States may have to change the length of qualifying period a person may have to satisfy before a benefit is paid or the amount of that benefit. Harmonisation may take the form of 'unification' or minimum harmonisation. Unification, sometimes called 'standardisation', requires all the national systems to adopt the same rules, nothing better and nothing worse. Minimum harmonisation is achieved by setting minimum standards and allowing states to provide better provisions if they wish. Harmonising instruments affect the national laws and affect everyone who is covered by those laws, not just migrants.

Co-ordinating instruments are only concerned with migrants. Co-ordinating instruments do not change the substance of the national social security system, they do not change the amount of benefit or the conditions of entitlement. They only apply in situations where there is some cross border element. They ensure that migrants are treated fairly. Where social security is a creature of national law, co-ordination is a creature of international law and relies heavily upon co-operation between states.

1.4 The four basic principles of social security co-ordination

Four basic principles are used by co-ordination law in order to protect the social security of migrants and rectify the problems created by the territoriality and diversity of national social security systems. These four basic principles are:

1.4.1 Equal treatment

This principle prevents states treating foreign nationals differently to their own nationals. Such discrimination may be either direct or indirect. Direct discrimination takes place when a national rule or regulation overtly treats nationals and non-nationals differently, for example reserving the coverage of a particular social security scheme to nationals only. Indirect discrimination describes the situation where a national rule or regulation appears to be neutral on its face but in reality has a harsher impact upon non-nationals than nationals. For example a requirement that says that family benefits will only be paid for those children who have been born within the state territory. This means that if a national of that state has a child born in another state s/he will not receive any benefit, this rule therefore appears to apply to both nationals and foreigners. However, in reality a foreign national is more likely to have a child born abroad and so the impact of this rule is going to affect more foreigners than nationals, making it indirectly discriminative.

1.4.2 Determination of the applicable legislation

The problems caused by positive and negative conflicts of law can be avoided by stating that the law of only one state should apply at any time and then establishing a rule or system of rules to decide which law it should be. Once the applicable law has been determined the migrant will pay contributions and receive benefits according to that law. The applicable law can be determined in a number of ways. The usual way is that of the law of the state of employment (*lex loci laboris*), however the law of the state of residence may also be applicable.

Determining the applicable legislation is not always an easy task and special rules are often necessary to deal with the more complicated situations that can arise from migration. For example, special rules are often required for those who are employed in the transport sector and so 'work' in a number of states, in this case the applicable law is often that of the country in which their company is based. Sailors are usually covered by the law of the flag. Special rules are also required where someone works in more than one state or is self-employed in one state and employed in another.

The rules for determining the applicable legislation may vary from one type of benefit to another but in general only one legislation should be applicable in relation to the same person or the same employment or economic activity. So benefits in-kind such as medical care could be treated differently to cash benefits such as sickness benefit or old age pension.

1.4.3 Maintenance of acquired rights

As explained above there is a danger that when persons move from one state to another they will lose the credit they have gained for any periods of residence or employment in their former state. This could be very harsh indeed for those who wish to move to another country after they have already been employed in their home state for 15 or 20 years. The basic principle of the maintenance of acquired rights states that periods of residence, employment or other economic activity performed in one state should be recognised in another. This adding together of periods of residence, employment or economic activity is called aggregation. For example State A requires 20 years of residence before an old age pension will be paid, whilst State B asks for 15 years of employment and State C for 10 years of economic activity. If someone has lived and worked in State A for 10 years, State B for 8 years and State C for 3 years, s/he will not be entitled to a pension under any of those national systems. However, if the principle of aggregation is applied the individual in question would have a total of 21 years employment/residence which would be enough to satisfy the national rules of any state.

Periods of residence, employment and economic activity are not just relevant to whether or not a person is entitled to a benefit they are often used in order to calculate the amount of the benefit. Social security systems operate according to what is often a very delicate balance on a national level between the amount paid out in benefits and the amount received in contributions. If the aggregation principle were applied directly to the process of calculating benefits there would be some serious unfairness. Although this is less of a problem with short-term benefits such as sickness benefit it can become a very serious problem for long-term benefits such as old age or invalidity. For example a man lives and works in State A for 15 years where he pays residential tax to cover the costs of his social security. If this man then moves to State B where he works for 10 years before retiring and claiming an old age pension it would be unfair to expect State B to pay him a pension equal to that man having worked in State B for 25 years. The affect would be that State A benefits from 15 years of contributions without having to pay anything and State B has to pay a long-term benefit even though it only received contributions for 10 years. This unfairness is avoided by the 'pro-rata temporis rule' this means that each state provides a pension according to the time that the recipient of the pension paid taxes/contributions in that particular state. So in the case of our example State A would pay a pension reflecting the 15 years of residence and State B a pension reflecting the 10 years of employment. The man would therefore receive two pensions, one from one state and one from the other. How these proportional pensions are calculated can vary from one social security co-ordination agreement to another and will be dealt with in greater detail in later chapters of this short guide.

1.4.4 The export of benefits

This principle will mainly apply to long-term benefits such as old age pension or invalidity pension which is paid either for the rest of a person's life or for a particularly long period. If someone has already been granted an old age pension, national law may state that this pension will no longer be paid if the recipient leaves the country. This would create a tremendous injustice to anyone who wanted or was forced by family circumstances to move abroad. The principle of the export of benefits states that if someone who is already entitled to or would be entitled to one of the benefits covered by the co-ordination instrument takes up residence in another state, his benefit shall still be paid by his old state. The amount of the benefit shall not be reduced or adjusted in any way as a result of this move. The principle of

the export of benefits may also apply to short-term benefits such as unemployment benefit whereby people seeking work in another state will still receive benefits from their original state. Benefits in-kind can also be exported, for example health care treatment may be provided in another state at the cost of the patient's home country. This may be relevant where someone falls ill whilst on holiday, but it could also apply if someone requires a particular operation which is not available in their home state.

1.5 The legal instruments of social security co-ordination

As social security co-ordination is part of international law it is formed by international agreements and treaties. Social security co-ordination instruments fall into the following categories:

1.5.1 Bilateral and Multilateral Agreements

These are treaties signed by two or more states agreeing to follow one or more of the four basic principles of co-ordination to relation to one or more of the various social risks (old age, invalidity, sickness, maternity, health care etc). Bilateral agreements concerning migrants and social security coverage have been in operation in Europe for nearly two hundred years¹. The first treaties were principally concerned with the protection of migrant workers with regard to the social risk of employment injury. Over the last century the number and complexity of bilateral treaties have grown immensely. They tend to reflect migration patterns which in turn relate to geography, language and culture.

1.5.2 Multilateral Conventions

These are standardised instruments containing one or more of the four basic principles of social security co-ordination that are opened up for signature for a number of states. They are typically drafted by international organisations and made available to their members for ratification. Their members are not obliged to ratify the instruments but do so on a voluntary basis. Multilateral instruments tend to be less detailed and precise than bilateral agreements because they have to accommodate many different types of social security system.

1.5.3 Supra-national law

Supra-national law is produced by supra-national bodies and is imposed upon all of their member states. When a state joins a supra-national organisation it effectively agrees to be bound by the primary and secondary legislation of that body. Member states are not left with a choice of whether to ratify the instrument or not. Should any of that primary or secondary legislation conflict with national legislation then it is the national legislation that must be ignored. The law of supra-national bodies is supreme over national law. Supra-national law may incorporate one or more of the four basic principles of social security co-ordination.

¹ The first bilateral social security convention aimed at the protection of migrants was that between France and the Dukedom of Parma in 1827, this guaranteed the payment of pensions owed by one of these nations to subjects of the other.

1.6 The hierarchy of international instruments

When a particular migrant is covered by more than one international agreement, the following hierarchy is used to determine which instrument should be relied upon:

1. Supra-national law
2. Multilateral conventions
3. Bi- or multilateral agreements

1.7 The terminology of social security co-ordination

Below are a number of words and phrases that are frequently used in written material and discussions about social security co-ordination:

Social risks: this term stems from the basic principle that social protection provides security against the risks that form part of our everyday lives, e.g. the risks of no longer being able to work due to old age, of becoming unemployed, of being injured at work etc. Social risks are also referred to as ‘social contingencies’. The International Labour Organisation Social Security (Minimum Standards) Convention No. 102 defined the following social risks to fall within the realm of ‘social security’:

- i) The need for medical care
- ii) Temporary incapacity for work (sickness cash benefit)
- iii) Unemployment
- iv) Old age
- v) Work accident and occupational disease
- vi) The responsibility for the maintenance of children (family benefits)
- vii) Maternity
- viii) Long-term incapacity for work (invalidity)
- ix) Death of the breadwinner (survivor’s benefit)

To this list should be added the risk of poverty or sometimes as it is called, the risk of ‘need’. The collective term for the coverage of the nine social risks of social security (as defined in ILO Convention No. 102) and the risk of poverty is ‘social protection’.

Social security and Social assistance: Social security schemes are those that protect people against one or more of the nine recognised social risks contained within the ILO Convention 102 (see list in paragraph above). Social assistance on the other hand deals purely with the social risk of need or poverty and does not require there to be any link between the reason for that need and a recognised social risk. Both social insurance and social assistance benefits can be made conditional upon a means and/or asset test. In other words the benefit will only be paid if the claimant receives an income below a specified level. The important difference between social security and social assistance is that social security pays benefits to people who are poor *because* they are an invalid or *because* they are a widow. Social assistance on the other hand does not relate to *why* a person is poor, it is simply enough for that person to fall below the subsistence minimum. One criterion for a social security benefit is also that the legislation under which the benefit is granted must place the claimants in a legally defined position as a result of which they have an absolute right to benefits as opposed to a conditional right dependent upon the exercise of a discretionary power in their

favour. For example a pension that is paid to all persons with a monthly income of below 100 EURO and who are aged over 65 years would be a social security benefit because it is linked to a social risk (old age). A benefit that is simply paid to all those who have an income below 100 EURO per month, regardless of why this income may be so low, is a social assistance benefit.

Contributory and Non-contributory schemes: Contributory schemes are those where the recipient must have made a financial contribution to the financing of a scheme or is required to fulfil a minimum period of occupational activity before the benefit is paid. The contribution may be made through social security payments deducted from his/her wages and/or from contributions made on a worker's behalf by that worker's employer. Some states do not require their citizens to pay distinct social security contributions, these states typically finance their social systems through income taxes, this is why reference is made to minimum periods of occupational activity. Non-contributory schemes are those that do not require any financial contribution from the recipient or any minimum periods of occupational activity. Non-contributory scheme are often means-tested.

Personal, material and territorial scope: these terms are used to describe the coverage of international legal instruments for the co-ordination of social security. In this context 'personal scope' refers to the categories of persons who are covered, for example nationals, employees, self-employed persons, permanent residents etc. 'Material scope' refers to the range of social protection schemes covered for example schemes dealing with particular social risk such as old age or invalidity, contributory or non-contributory schemes or social assistance schemes. 'Territorial scope' refers to the states covered by the international instrument, sometimes it is necessary to define the political borders of a particular state for example does its coverage extend to a country's colonies?

Legislation: this term covers all laws, regulations and other statutory instruments which are in force in a state or in part of a state and which relate to the branches or schemes covered by the international instrument.

Cash benefits and Benefits in-kind: cash benefits as their name suggests involve the payment of money. Benefits in-kind refer to the provision of goods and services by the social protection system, for example medical care, hospital treatment or pharmaceutical supplies.

Residence and Presence: for these terms special definitions can be found in the various instruments which describe or define them in more detail when such definitions apply for the purposes of the instrument itself. However, where only national laws apply, the definitions in the national legislation are in no way modified.

CHAPTER TWO

SOCIAL SECURITY CO-ORDINATION IN PRACTICE

INTRODUCTION

The previous chapter focused upon the theory behind international social security co-ordination. This chapter deals with actual social security co-ordinating instruments. It begins by providing a very brief introduction to bilateral agreements before dealing with multilateral and supra-national instruments. In this chapter you will find the following sections:

- 2.1 Bilateral agreements
- 2.2 Multilateral agreements
- 2.3 Supra-national laws

2.1 Bilateral agreements

As explained in the previous chapter, bilateral agreements tend to reflect migration patterns between countries. In practice bilateral agreements vary greatly. They are better placed to facilitate the unique features of each country's social security system because they are concluded between only two states.

Bilateral agreements vary in terms of personal scope. Some bilateral agreements are restricted in this respect covering only nationals of the contracting parties, whilst others are unrestricted and so apply to any person who has been covered by the social security systems in the contracting parties (regardless of that person's nationality). They also vary in terms of their material scope, they may be restricted to certain social risks or confined to contributory rather than non-contributory benefits.

The Council of Europe has produced a set of model provisions for bilateral agreements. These model provisions represent a guide for those states that wish to conclude social security co-ordination agreements. The model provisions are not binding and leave states with a great deal of flexibility. Their aim is to make the negotiation and implementation of bilateral agreements simpler and quicker. Once two states have agreed to co-ordinate their social security systems they are spared the complexity, expense and risk entailed in drafting their own provisions. The model provisions of the Council of Europe cover all four of the basic principles of social security co-ordination: equality of treatment, determination of the applicable legislation, maintenance of acquired rights and export of benefits.

2.2 Multilateral conventions

Multilateral instruments of co-ordination are typically prepared by international organisations that draft conventions, which are then made available for their member states to join. The member states are not obliged to ratify these instruments but should they choose to do so they shall be bound by the provisions. There are two principal international organisations concerned with the production of multilateral social security co-ordination instruments that affect Europe. These are the International Labour Organisation and the Council of Europe.

The **International Labour Organisation** (ILO) was established in 1919, is a world wide organisation committed to protecting social rights by raising health and safety standards, promoting equality, fighting social exclusion and campaigning for dignity at work. It has therefore always been involved in protecting the social security rights of migrant workers and in 1925 adopted its first co-ordination instrument: *Convention No. 19 on Equality of Treatment (Accident Compensation)* which provides for the equal treatment of the nationals of the contracting parties in relation to industrial injuries. In it adopted the 1935 *Convention No. 48 on Maintenance of Migrant's Pensions Rights* which provides for the export of pensions as well as their aggregation and pro-rata payment.

The **Council of Europe** was established in 1949 by 10 member states and by 2003 its membership now covers 45 member states spanning western, central and eastern Europe. It is committed to ensuring the protection of social rights and achieving increased social cohesion. Its instruments in the field of co-ordination are generally drafted by an Expert Committee on Social Security and adopted by the Council of Europe's Committee of Ministers. The following multilateral co-ordination instruments have been drafted and adopted:

The European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors: this instrument entered into force in 1954 and was intended as a first step in the co-ordination of social security within the member states of the Council of Europe. It applies to benefits for old age, invalidity and survivors (but not death grants) provided that they are not paid as part of an employment injury scheme. Although it includes both contributory and non-contributory schemes it does not apply to social assistance or special schemes for either civil servants or war invalids.

This Interim Agreement is concerned with the equal treatment of migrants. Equal treatment must be ensured for all nationals of other contracting parties. So when a national from one of the contracting parties (his/her 'home state') moves to the territory of another contracting party (the 'host state') s/he should receive the same benefits under the same conditions as nationals of the host state. However, this right to equal treatment is not conveyed automatically but certain residence conditions may be required, for example in relation to non-contributory invalidity pensions.

The Interim Agreement further provides that any bilateral or multilateral agreement concluded between two or more contracting parties should be extended to the nationals of the other contracting parties. For example a national of a contracting party leaves her home state, State A, and moves to another contracting party, State B, and later to another contracting party, State C. Between State B and State C a bilateral social security co-ordination agreement for the nationals of State A and State B is in force. For the purpose of

the agreement between B and C, the migrant is treated as if she is a national of B and C and is entitled to the advantages derived from this agreement.

The European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors: this instrument also entered into force in 1954. It extends the equal treatment provisions of the European Interim Agreement on Social security relating to Old Age, Invalidity and Survivors to schemes relating to medical care, sickness and maternity cash benefits, unemployment benefits, death grants, employment injuries benefits and family allowances. The general coverage and structure of this Interim Agreement follows that of the Interim Agreement on Social Security relating to Old Age, Invalidity and Survivors, but the main rule is (except for employment injuries benefits) that the person in question must be ordinarily resident in the territory of the contacting party of which he claims the benefit. One of the reasons for having two separate interim agreements is that some states may have been prepared to co-ordinate short-term benefits (like sickness cash benefits) but not long-term ones (like old age pensions).

The European Convention on Social and Medical Assistance: this instrument also entered into force in 1954. It essentially fills in the gaps left by the two Interim Agreements described above. It covers those schemes where the granting of benefits is based on need and a lack of sufficient resources. It provides for the equal treatment of nationals from other contracting parties and limits the situations in which migrants can be repatriated simply because they are in need of social assistance. It allows states to impose certain minimum periods of residence before a person earns the right not to be repatriated because of their need of assistance. It further ensures that repatriation only takes place when really necessary and does not offend any humanitarian considerations.

The European Convention on Social Security: this instrument came into force in 1977 and represents a much more comprehensive co-ordination than that provided for under the Interim Agreements. The European Convention on Social Security extends the co-ordination of social security systems beyond the principle of equal treatment by providing for the principles of the determination of the applicable legislation, the maintenance of acquired rights and the export of benefits.

The European Convention is not divided into separate legislation for long and short-term benefits but covers all of the following schemes:

- sickness and maternity benefits,
- invalidity benefits,
- old age benefits,
- survivors benefits,
- occupational injury and disease benefits,
- death grants,
- unemployment benefits, and
- family benefits

The wider ranging European Convention is thus intended to replace the Interim Agreements by developing a more comprehensive co-ordination mechanism. It should be noted that the provisions of the Convention can be divided into those that take immediate effect as soon as a state ratifies the Convention and those that will not come into effect until implementing measures are concluded between the contacting parties. In the latter case even though the

state has ratified the Convention it is not bound by these particular provisions until the conclusion of a bilateral agreement with another contracting party for its application. These provisions do not have immediate force and have therefore only the character of model provisions.

The Protocol to the European Convention on Social Security: extends the personal scope of the Convention to all persons who are, or have been, subject to the legislation of one or more of the contracting parties, as well as members of their families and survivors. This means that the personal scope of the Convention, as amended by the Protocol, is not limited to the nationals of the contracting parties only. This Protocol was adopted in 1994 but is not yet in force.

2.3 Supra-national Laws

These are instruments created by supra-national bodies. These instruments are binding upon the member states, these states do not have any discretion whether to ratify the agreement or not. A supra-national instrument of this kind is not only binding on the member states but it is supreme over any national legislation dealing with the same matters. In other words if national law conflicts with supra-national law then the latter is supreme and must be applied over the former. There is only one supra-national body within Europe and that is the European Union. This is currently comprised of 15 member states and is soon to expand into central and eastern Europe. The European Union seeks to improve the standard of living of its people by developing an internal market. An internal market requires the free movement of goods, services, capital and persons over the boundaries of the member states.

It was clear from the outset that in order to enable the free movement of workers a migrant's social security position would have to be protected. People are not going to want to move from their home state if they lose all their acquired rights to their pension or they would not be able to claim unemployment benefit if they were to lose their job after they have moved to another member state. Provisions for the co-ordination of social security within the member states of the European Economic Community (as it was then called) have been in place since the birth of that institution in 1957. The European Economic Community has evolved considerably since the 1950's. The emphasis is no longer purely upon the economic but also the need for social regulation and protection of social rights.

The primary instrument for the co-ordination of social security within the European Union is Regulation 1408/71, which applies the principles of equal treatment, determination of the applicable legislation, the maintenance of acquired rights and the export of benefits to all social security schemes covered by the European Convention and ILO Convention 102. Initially its personal scope was limited to employed persons who were nationals of the member states and their families but it has been gradually extended to the self-employed, special schemes for students, special schemes for civil servants and recently to third country nationals. The necessary administrative measures for the application of Regulation 1408/71 are dealt with in Regulation 574/72. The provisions of the EU social security co-ordination mechanisms has been extended to the three EFTA states Iceland, Liechtenstein and Norway by the Agreement on the European Economic Area, as well as to the fourth EFTA state Switzerland through a separate agreement.

CHAPTER THREE

THE EUROPEAN INTERIM AGREEMENTS ON SOCIAL SECURITY

INTRODUCTION

This Chapter is concerned with the two separate Interim Agreements of the Council of Europe on social security. One of these Agreements is the European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors (No. 12 of the European Treaty Series), the other is the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors (No. 13 of the European Treaty Series). The reason for developing two separate Agreements was that the experts responsible for drafting the Agreements thought that some states may be prepared to accept co-ordination provisions in relation to short-term benefits, such as sickness or unemployment benefits but not to long-term benefits such as old age or invalidity pensions. However, in practice, all states that have ratified one of the Interim Agreements have also ratified the other.

Both of the Interim Agreements have been supplemented by Protocols concerning the rights of refugees. They have also been the subjects of an Explanatory Report produced by the Committee of Experts for Co-ordination in the Field of Social Security ('Committee of Experts'). The Committee of Experts is comprised of high-ranking civil servants from the member states of the Council of Europe. It operates as an important forum through which the implementation, interpretation and development of social security co-ordination within the Council of Europe is regularly discussed. The Explanatory Report on the Interim Agreements was adopted by the Council of Europe's Committee of Ministers, making it an official document of the Council of Europe.

Although the material scope of the two Interim Agreements does vary their structure and substance are very similar indeed. In fact most of the provisions of these two Agreements are identical, which allows this chapter to deal with both of them at the same time². Any differences in the substance of the Interim Agreements will be dealt with and brought to the reader's attention³. In this chapter you will find the following sections:

- 3.1 The history of the Interim Agreements
- 3.2 The substance of the Interim Agreements
- 3.3 The Protocols
- 3.4 The Explanatory Report

² This means that the Interim Agreements usually follow the same pattern of numbering, where this is the case any reference to specific articles of the Interim Agreements shall read 'Article X of both Interim Agreements'. If reference is made only to one Interim Agreement the reference will be made either to "Interim Agreement No.12" or "Interim Agreement No.13".

³ A list of signatures and ratifications to the Interim Agreements as of 1st September 2003 is attached (Appendix II). For the actual list as well as the references to the texts of the Interim Agreements, the Protocols and the Explanatory Report see Appendix I.

3.1 History of the Interim Agreements

The first initiative of the Council of Europe concerning social security for migrant workers was taken by the Consultative Assembly (now the Parliamentary Assembly) at its first session in September 1949 when it adopted a Recommendation on the role of the Council of Europe in the field of social security, in particular on the possibility of guaranteeing foreign workers the same social rights as nationals⁴.

The Committee of Ministers first examined the possibility of extending to all member states the provisions of the multilateral Convention on social security signed on 7th November 1949, at Paris by the five States signatory of the Brussels Treaty⁵. In view of the complexity of the problem, it decided to convene a Committee of Experts on Social Security. At the first meeting, this Committee of Experts came to the conclusion that this extension could not be reached and therefore, as an interim measure, proposed the conclusion of two provisional multilateral agreements.

Both Interim Agreements were signed on 11th December 1953 and entered into force on 1st July 1954. They represented the first step towards the multilateral co-ordination instruments of social security by the Council of Europe and were originally intended only as provisional instruments to fill the gap until what the pre-ambles to the Interim Agreements refer to as “a general convention based on a network of bilateral agreements”. This general convention eventually took the form of the European Convention on Social Security (‘the European Convention’). However, despite the entry into force of the European Convention the Interim Agreements continue to remain in force for those contracting parties of the Interim Agreements who have not yet ratified the European Convention. The Interim Agreements remain in force with a life of their own, which means that a state may still choose to ratify one or both of the Interim Agreements rather than the European Convention.

3.2 The Substance of the Interim Agreements

3.2.1 Two Functions of the Interim Agreements

The Interim Agreements perform two basic functions. The first is to ensure that there is **no discrimination between nationals** of the contracting parties⁶. In other words when a national from one contracting party (State A) moves to another contracting party (State B), State B is obliged to treat the person from State A in the same way as it treats its own nationals. This applies to matters such as conditions of entitlement to benefit, the amount of benefit and also the export of benefits. For instance a national of State A goes to work in State B for 25 years, receives a contributory old age pension from State B and then returns to State A. If the national law in State B would allow one of its own nationals to export the old age pension from State B to State A, State B cannot prevent the person from State A returning to State A and continuing to receive his or her pension from State B.

⁴ Session, 1949: Doc.79; I, 3

⁵ This Convention, signed between Belgium, France, Luxembourg, the Netherlands and the United Kingdom, guaranteed equal treatment to nationals of each Contracting Party in the application of the respective social security legislation and connected the bilateral agreements already concluded between these five states.

⁶ Article 2 of both Interim Agreements

The Interim Agreements are principally concerned with preventing direct discrimination based upon a person's nationality. They do not *generally* extend to indirect discrimination but there are two instances where the Interim Agreements condemn specific forms of indirect discrimination:

- i) The Interim Agreements expressly state that anyone who is born in the territory of a contracting party shall be treated as being born in any other contracting party⁷. This provision prevents contracting parties bi-passing their obligations of non-discrimination on the basis of nationality by imposing dual conditions of nationality *and* birth on entitlement to social security benefits or coverage. It is quite possible that a person can be a national of State A even if s/he was not born within the territory of State A, for example s/he was born in State B but his/her parents are both nationals of State A. If State A made payment of a benefit conditional upon both nationality and birth, even if the person in the example above returned to live in State A s/he would not be entitled to the benefit. Technically speaking State A does not discriminate on the basis of nationality. This dual condition is an example of indirect discrimination. The additional requirement of birth is apparently neutral and capable of excluding both nationals and non-nationals of the state concerned. However, such a requirement has a greater proportional affect upon non-nationals than nationals because non-nationals are far more likely to have been born outside the territory of the state imposing the birth condition. The Interim Agreements therefore state that a contracting party shall treat nationals of another contracting party as if they were nationals of the former contracting party born in its territory.
- ii) The Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors contains specific provisions on non-discrimination as regards the nationality of children. It is possible that a state may make the nationality of a child a condition of entitlement for family benefit. This is indirectly discriminatory as it is possible that a national of State A may have children who are nationals of State B (perhaps because of the nationality of one of their parents) however it is far more likely that a foreign national working in State A is going to have children who are not nationals of State A. The Interim Agreement therefore states that a contracting party shall treat a child who is a national of any other contracting party as a national of the former contracting party⁸.

The second basic function of the Interim Agreements is to **extend the provisions of any bilateral or multilateral agreements** concluded between two contracting parties to cover nationals from all the contracting parties⁹. For example, States A, B and C are all contracting parties to the Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors. A national of State A moves to State B and works there for 10 years before moving to State C where he works a further 15 years until he retires. State C requires 20 years of employment before an old age pension is awarded. There is no bilateral agreement between States A and C but there is a bilateral agreement between States B and C. The bilateral agreement between B and C provides for the aggregation of periods of employment undertaken in each state but is restricted to the nationals of States B and C. According to the bilateral agreement itself the national of State A is not covered by its provisions because he

⁷ Article 2(2) of both Interim Agreements

⁸ Article 2(3) of Interim Agreement No.13

⁹ Article 3 of both Interim Agreements

is neither a national of State B nor State C. However, States A, B and C are bound by the Interim Agreement and State C is therefore obliged to treat the national of State A in the same way as a national of State B. This means that State C must take into account any periods of work performed by the national of State A whilst that person was in State B. As no agreement exists between States A and C then C is not obliged to consider any periods of employment the person may have had in State A.

This extension of rights does not just apply to bilateral agreements signed between the contracting parties but also multilateral agreements, even multilateral agreements signed by contracting parties and non-contracting parties. The provisions of the latter type of multilateral agreements will be extended provided that the extension of rights according to the Interim Agreement does not adversely affect non-contracting parties. Imagine the bilateral agreement described in paragraph above was in fact a multilateral agreement between States B, C, D and E, with States D and E not being contracting parties to the Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors. The national of State A will still be entitled to claim against States B and C for the aggregation of employment periods spent in States B and C but he could not claim any rights of aggregation against States D and E.

The first function (ensuring non-discrimination) and the second function (extension of existing international agreements) of the Interim Agreements only relate to one of the four basic principles of international social security co-ordination, that of equal treatment. Neither of the Interim Agreements directly obliges contracting parties to apply the principle of the maintenance of acquired rights, the principle of the determination of one applicable legislation or the principle of the export of benefits. However, these three other principles will be applied to the extent that two or more contracting parties have signed a bilateral or multilateral agreement. The beauty of the Interim Agreements is that they avoid the complexity of developing rules for establishing all four basic principles of international social security co-ordination and instead rely upon existing mechanisms to ensure that an increased number of migrants receive the protection of these basic principles.

The right of equal treatment granted by the Interim Agreements is not absolute. The contracting parties are free to exclude the principle of equal treatment in some areas or make it conditional in others. For instance the principle of non-discrimination on the basis of nationality may be excluded entirely in relation to national laws concerned with the participation of insured persons in the administration of a social security scheme¹⁰. This refers to those states that hold elections so that representatives of employers, employees, trade unions, patients etc may have some direct influence on how a social security scheme is run. The Interim Agreements effectively state these contracting parties remain free to exclude foreign nationals from standing for or voting in these elections.

The Interim Agreements also allow contracting parties to make the right to non-discrimination and the extension of international social security agreements conditional upon 'ordinary residence' or the completion of minimum periods of residence. These conditions vary between the two Interim Agreements and also between contributory and non-contributory schemes. They shall be dealt with below at 3.2.3 The contracting parties are not obliged to exclude the application of the principle of equality or impose the suggested conditions, it is simply an option left open to them by the Interim Agreements. In fact it is a

¹⁰ Article 6 of both Interim Agreements

general principle of the Interim Agreements that contracting parties are free to adopt rules that are more favourable for migrants than those contained within those Agreements¹¹.

3.2.2 The Material Scope of the Interim Agreements

The Interim Agreements do vary as regards the range of schemes they cover. The *Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors* covers schemes that provide:¹²

- i) benefits in respect of old age,
- ii) benefits in respect of invalidity (permanent or long-term incapacity), other than those awarded under an employment injury scheme¹³, and
- iii) benefits to survivors, other than death grants or benefits awarded under an employment injury scheme. Death grants refer to one-off lump sum payments made to a person's survivors. This Agreement is therefore restricted to periodic payments made to those who have lost a breadwinner¹⁴.

The *Interim Agreement on Social Security Schemes other than Schemes for Old Age, Invalidity and Survivors* applies to the following social risks:¹⁵

- i) sickness, maternity and death (death grants), including medical benefits insofar as they are not subject to a needs test. 'Needs test' is not defined in the Interim Agreement. It refers to any conditions placed upon the claimant's means or assets whereby the benefit will not be given if that claimant has an income and/or assets over a prescribed threshold.
- ii) employment injury, this includes benefits for both short-term incapacity and long-term incapacity. It also includes schemes where employers are obliged to compensate their employees for any injuries caused by their work duties. This compensation may take the form of a lump-sum payment or a periodic benefit,
- iii) unemployment, and
- iv) family allowances.

Both of the Interim Agreements expressly include contributory and non-contributory schemes¹⁶. The Interim Agreements themselves do not include definitions of what constitutes a contributory or non-contributory scheme. The Explanatory Report refers to the definitions used in the European Convention, which was of course drafted after the Interim Agreements. The European Convention describes a contributory scheme as one "*which provides for benefits, the award of which depends either on direct financial participation by the persons concerned or by their employer, or on a qualifying period of occupational activity*" and non-contributory scheme as one "*under which the award of benefits does not*

¹¹ Article 5 of both Interim Agreements

¹² Article 1(1) of Interim Agreement No.12

¹³ Invalidity under an employment injury scheme is covered by Interim Agreement No.13

¹⁴ Death grants and benefits awarded under an employment injury scheme are covered by Interim Agreement No.13

¹⁵ Article 1(1) of Interim Agreement No.13

¹⁶ Article 1(2) of both Interim Agreements

depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity”¹⁷.

Both Interim Agreements expressly exclude the following:¹⁸

- i) public assistance: public assistance schemes are covered by a complementary instrument, namely the European Convention on Social and Medical Assistance (see Chapter 4 of this Short Guide). The two Interim Agreements plus the Convention on Social and Medical Assistance all combine to cover the full range of social protection; long-term social security benefits, short-term social security benefits and social/public assistance. It may seem strange that the term ‘public assistance’ is used in the Interim Agreements and ‘social and medical assistance’ is used in the complementary instrument but in the context of the Council of Europe’s co-ordination mechanisms these two terms mean the same thing.
- ii) special schemes for civil servants, it should be noted that this does not exclude civil servants per se. It only excludes schemes that cover exclusively civil servants. If civil servants are covered by a general scheme that includes workers from all sectors then they will benefit from the Interim Agreements in respect of that scheme. Of course, if they have an exclusive supplementary scheme that pays out on top of the general scheme, then that supplementary scheme would be excluded from the Interim Agreements.
- iii) benefits paid in respect of war injuries or injuries due to foreign occupation. These benefits are inherently tied to one’s sense of national identity.

Very few of the terms used to describe the material scope of the Interim Agreements are actually defined within those Agreements. Some terms are expressly left to the contracting parties to define according to their own laws these include “territory” and “nationals”¹⁹. Leaving so many terms to be defined by the contracting parties could create grounds for uncertainty and dispute. However, each contracting party is obliged to list all the schemes to which the Interim Agreements apply²⁰. This list is contained with Annex I. Annex I of each Interim Agreement represents an *exhaustive* list of the schemes subject to that Agreement. In general it does not provide a list of laws and regulations but simply identifies each scheme. Whenever a contracting party abolishes a scheme or creates a new one, and that scheme falls within the material scope described in the Interim Agreements, that contracting party must declare this to the Secretary General of the Council of Europe within three months of the date of publication of the national law abolishing/creating the scheme²¹. As will be seen below, it is possible for contracting parties to make reservations thereby excluding a particular scheme from the material scope of the Interim Agreements.

The range of multilateral and bilateral agreements covered by the Interim Agreements can be found in Annex II of those agreements²². As with Annex I this Annex represents an exhaustive list and reduces the potential for uncertainty and dispute between the contracting parties.

¹⁷ Article 1(y) of the European Convention on Social Security

¹⁸ Article 1(2) of both Interim Agreements

¹⁹ Article 1(4) of both Interim Agreements

²⁰ Article 7 of both Interim Agreements

²¹ Article 7(2) of both Interim Agreements

²² Article 8 of both Interim Agreements

3.2.3 Conditions that may be placed on the Rights provided by the Interim Agreements

The right to non-discrimination and to the extension of bilateral and multilateral agreements is not absolute. The conditions that may be imposed upon entitlement vary between the Interim Agreements, they also vary according to the social risk covered and whether a scheme is contributory or non-contributory. The best way to describe the conditions of coverage by the Interim Agreements is to deal with one Interim Agreement at a time:

European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors: firstly, the rules on non-discrimination apply to invalidity pensions only where the person claiming the benefits was “*ordinarily resident*” in the contracting party before the first diagnosis of the medical condition leading to his or her long-term incapacity²³. This condition applies to both contributory and non-contributory pensions. One reason for this condition is to prevent ‘social tourism’. This describes the situation where a person travels from one country to another in order to obtain higher social security benefits²⁴.

Secondly, the rules on non-discrimination apply to non-contributory pensions only if the person concerned has been:

- i) a resident of the contracting party in which he is claiming the benefit for a total of at least 15 years since s/he reached the age of 20 years. This period of 15 years does not have to be continuous residence,
- ii) “*ordinarily resident*” in the country where the benefit is claimed without interruption for at least 5 years preceding the claim. There is no definition of ordinarily resident, this is left to the contracting parties. It will usually involve rules on how long a person may leave the state before they are no longer considered an ordinary or habitual resident, and
- iii) the claimant continues to be ordinarily resident in the country where the benefit is paid²⁵. This provisions effectively acts as a block against the export of non-contributory benefits. Thus even where a national law states that the non-contributory pension will be paid to nationals who move to another country this national law can not be relied upon by nationals of other contracting parties claiming under the Interim Agreement because as soon as these people leave the territory of the state in which they claim their benefits they will no longer be ordinarily resident there. This in turn means that they will no longer be entitled to equal treatment.

However in relation to contributory pensions the rules on non-discrimination apply in all cases where the person concerned is resident in the territory ***of any one of the contracting parties***²⁶. Please note that this is only a requirement for residence and not for ordinary residence, also note that there are no minimum periods of residence or financial contributions provided for. As regards contributory pensions there is no obligation to remain ordinarily resident after the benefit as been granted. This means that, unlike non-contributory

²³ Article 2(1)(a) of Interim Agreement No.12

²⁴ Social tourism is also controlled by the national rules relating to the granting of temporary or permanent residence. Some states will only allow people to obtain residence permits if those people have sufficient resources to survive and are in a good state of health.

²⁵ Article 2(1)(b) of Interim Agreement No.12

²⁶ Article 2(1)(c) of Interim Agreement No.12

pensions, if national law allows a pension to be exported a national of a contracting party may rely upon this.

If a person does not satisfy the conditions described above a contracting party is free to exclude them from equal treatment with its own nationals. This means that a person may be prevented from joining a social security scheme or refused benefits under a social security scheme because s/he is not a national of the contracting party.

Finally, the provisions of bilateral and multilateral agreements will not be extended in respect of non-contributory pensions unless the claimant has:

- i) resided within the contracting party for a total of at least 15 years after reaching the age of 20 years, and
- ii) has been ordinarily resident without interruption in that state for at least 5 years preceding the claim²⁷.

Failure to fulfil these conditions will prevent the person claiming any advantages under whatever bilateral or multilateral agreements may exist in respect of non-contributory pensions. For example States A, B and C have all ratified the Interim Agreement. A person from State A moves to State B when she is 20 years old, she stays there until she is 35 years old and then returns to State A. When she reaches 57 years of age she comes back to State B. When back in State B she works and resides there uninterrupted (despite the occasional holiday back to State A) for a further 3 years. The retirement age in State B is 60 years for women and so she retires and moves to State C where within 6 months she realises she is unable to support herself financially. A bilateral agreement exists between State B and State C whereby non-contributory pensions can be exported by nationals of State B to State C. The person in our example has not fulfilled the five years of uninterrupted ordinary residence in State B prior to her claim and so may not rely upon this agreement in order to claim a non-contributory pension in State B which could be exported to State C. State B would be entitled to refuse the export of this benefit under the bilateral agreement purely on the basis that the claimant is not a national of State B.

European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors: the conditions applied to the rules on non-discrimination are as follows:

- i) the right to non-discrimination applies in respect of benefits for ***employment injuries*** (either contributory or non-contributory) if the claimant resides in the territory of ***any one of the contracting parties***. For example States A, B and C have all ratified the Interim Agreement. A national from State A goes to work in State B where he suffers from a employment injury rendering him permanently incapable of work. He then moves to State C where his daughter lives so that she can take care of him. He will still fulfil the conditions required for non-discrimination. Therefore if the ***national law*** in State B allows nationals of State B to export employment injury benefits to State C, the national of State A will also benefit from the provisions of this national law²⁸.

²⁷ Article 3(2) of Interim Agreement No.12

²⁸ Article 2(1)(a) of Interim Agreement No.13

- ii) For all benefits other than those for employment injuries the claimant must remain ordinarily resident in the territory of the contracting party in which the benefit is claimed. In other words even if there is a national law that specifically allows nationals to export these benefits, nationals of other contracting parties cannot rely upon that national law because once they cease to be ordinarily resident, the contracting party in which they were previously residing is free to discriminate against them on the basis of nationality²⁹.
- iii) benefits for sickness, maternity or unemployment will not be subject to the rules on non-discrimination unless the contingency to which they relate occurred whilst the claimant was already ordinarily resident in the state where the benefit is claimed. The relevant dates are the date of the first medical certificate provided for the sickness, the presumed date of the conception of the child or the loss of employment respectively³⁰. These conditions are applied inter alia to avoid social tourism.
- iv) For non-contributory benefits other than benefits in respect of employment injuries the rules on non-discrimination will only apply when the person has been resident in the territory of the contracting party for at least 6 months prior to claiming the benefit³¹. Note that for these 6 months there is no requirement for “ordinary residence” or for continuous/uninterrupted residence.

Finally, 6 months of residence immediately preceding the claim are also provided for the extension of the provisions of bilateral and multilateral agreements in respect of non-contributory schemes³².

3.2.4 Annexes and Reservations

Annex I of each Interim Agreement sets out the social security schemes in relation to each contracting party to which the Interim Agreement applies³³. As already mentioned above Annex I does not list the specific laws and regulations but only the various social security schemes to which the Interim Agreement applies. Thus, if a new law or regulation relates to a scheme already listed in Annex I and does not change the character of the scheme, it is not necessary to notify such law or regulation to the Secretary General of the Council of Europe. Annex I should also indicate in regard to each scheme whether it is of a contributory or a non-contributory nature.

Annex II to each Interim Agreement includes all bilateral and multilateral agreements to which each Interim Agreement applies. Bilateral and multilateral agreements which provide only for equality of treatment are not to be included in Annex II.

The notification of any new law or regulation or of new bilateral or multilateral agreements must be made within 3 months of publication of the national law or regulation or the coming into force of such a new agreement³⁴.

²⁹ Article 2(1)(b) of Interim Agreement No.13

³⁰ Article 2(1)(c) of Interim Agreement No.13

³¹ Article 2(1)(d) of Interim Agreement No.13

³² Article 3(2) of Interim Agreement No.13

³³ Article 7(1) of both Interim Agreements

³⁴ Article 7 (2) and Article 8(2) of both Interim Agreements

The contracting parties are entitled to make reservations in respect of the application of any social security scheme contained within Annex I or any bilateral and multilateral agreements listed in Annex II³⁵. These reservations are listed in Annex III to the Interim Agreements. The only restriction placed upon making such a reservation is that it must be made at the date of signature of the Interim Agreement by a state or at the time when the state is obliged to notify the Council of Europe of any new scheme or agreement. This means that reservations cannot be entered after these deadlines. For instance, if a contracting party failed to enter a reservation in respect of a scheme that was in existence at the time that state ratified the Interim Agreements it would not be able to make a reservation in respect of that scheme after the date of ratification. If that scheme falls within the material scope of the Interim Agreements then it should be placed within Annex I.

As Annexes I to III of each Interim Agreement constitute an integral part of the Agreements³⁶, the question is what happens if a contracting party does not notify the Council of Europe of a new scheme or agreement. This brings us on to the issue of the supervision and enforcement of the Interim Agreements.

3.2.5 Enforcement and Dispute Resolution

There is no supervision mechanism applied to the Interim Agreements. There is no judicial body overseeing its implementation as there is with the European Convention on Human Rights. Neither is there a regular system of non-judicial supervision through the submission of national reports as there is with the European Code of Social Security. However, the Committee of Experts meets regularly to discuss the implementation of the Interim Agreements and the interpretation to be given to their provisions. If there is a dispute between any of the contracting parties those parties must first attempt to resolve any problems by negotiation³⁷. If this fails a system is established within the Interim Agreements that deals with the selection of an appropriate arbitral body or arbitrator³⁸. The decision of the arbitral body or arbitrator is then final and binding upon the parties³⁹.

No disputes have so far arisen concerning incomplete Annexes. This can be explained by the fact that until quite recently most contracting parties were bound by Regulation (EEC) No. 1408/71. But it can also be because in practice the provisions have been applied to schemes or bilateral agreements that have not been notified.

3.2.6 Implementation

The Interim Agreements do not need to provide the contracting parties with a great deal of guidance on their practical implementation. This is because they only relate to non-discrimination and the extension of bilateral and multilateral agreements. The obligations relating to non-discrimination are made clear within the Interim Agreements and the bilateral and multilateral agreements will usually have their own provisions for implementation. The

³⁵ Article 9 of both Interim Agreements

³⁶ Article 10 of both Interim Agreements

³⁷ Article 11(2) of both Interim Agreements

³⁸ Article 11(3) of both Interim Agreements

³⁹ Article 11(4) of both Interim Agreements

Interim Agreements therefore simply state that necessary arrangements shall be determined by the contracting parties⁴⁰.

3.2.7 Ratification and Entry into Force

The Interim Agreements are available for signature to all of the member states of the Council of Europe⁴¹ and non-member states may be invited to accede to them by the Committee of Ministers of the Council of Europe⁴². States that wish to ratify one or both of the Interim Agreements must deposit an instrument of ratification with the Secretary General of the Council of Europe. This is a formal letter that is usually signed by the head of a State and certifies that the national procedure for ratifying a treaty has been completed. The Interim Agreement(s) will then enter into force on the first day of the month following the deposit of the instrument of ratification⁴³. Upon entry into force a number of people will be covered by bilateral and multilateral agreements by which they were not previously covered. This means that these people may become entitled to benefits to which they were not previously entitled. Provided these people claim their new benefits within one year of the entry into force of the relevant Interim Agreement they will be paid the full amount of the benefit from the date of its entry into force. If they apply outside this one-year deadline they will only be entitled to benefits from the date of their application and there will be no backdated entitlement unless the contracting party paying the benefit extends this deadline⁴⁴ voluntarily. For example a person from State A moves to work in State B and then State C. States B and C are both bound by the Interim Agreements but State A is not. States B and C have a bilateral agreement that allows nationals of States B and C to export a benefit to State C. The person from State A is therefore not covered by this bilateral agreement and as a result is not entitled to export his/her benefit from B to C. State A then ratifies both the Interim Agreements, which has the effect of extending the provisions of the bilateral agreement between States B and C to nationals of State A. As a result of this extension the person from State A becomes entitled to the export of his/her benefit from State B. However, the person in question does not realise this and does not make his application until the Interim Agreements have been in force for 10 months. According to the Interim Agreements s/he is entitled to a retroactive payment of 10 months worth of benefit.

3.2.8 Denunciation

Once a state has ratified one or both of the Interim Agreements it is free to denounce those Agreements⁴⁵. However, denunciation does not completely free the contracting party from the application of the Interim Agreements. Both Agreements state that even if denunciation takes place a state is still bound to:

- i) respect any rights already acquired under the provisions, this means a the denouncing state can not stop paying benefits that it has already started to pay in accordance with the Agreements,

⁴⁰ Article 11(1) of both Interim Agreements

⁴¹ Article 13(1) of both Interim Agreements

⁴² Article 14(1) of both Interim Agreements

⁴³ Article 13(2) of both the Interim Agreements

⁴⁴ Article 4 of both Interim Agreements

⁴⁵ Article 12 of both Interim Agreements

- ii) continue to pay benefits which have been exported to another contracting party, and
- iii) take into consideration periods of residence, employment or occupational activity completed before the denunciation. This applies to any bilateral or multilateral agreements that provide for the aggregation of such periods.

3.3 The Protocols

The Protocols to each of the Interim Agreements are exactly the same and entered into force on 1 October 1954. They extend the personal scope of the Agreements to include refugees⁴⁶. The definition of ‘refugee’ in the Protocols refers to the definition in the Geneva Convention on the Status of Refugees of 1951⁴⁷. This extension means that each refugee shall be treated in the same way as any other national of a contracting party. They are therefore entitled to non-discrimination and the extension of multilateral and bilateral agreements between the contracting parties. Bilateral and multilateral agreements will only be extended to refugees if all the contracting parties to the agreement have ratified the appropriate Protocol.

3.4 The Explanatory Report

In 1991 the Committee of Experts produced an Explanatory Report on the European Interim Agreements on Social Security and the Protocols thereto. This explanatory report deals with both of the Interim Agreements and their Protocols. One of the primary goals of the report is to encourage non-European Union countries in Central and Eastern European to accede to the Interim Agreements. It advances the Interim Agreements as a first step in the direction of social security co-ordination and stresses that although originally only intended as provisional measures these Agreements could be of great assistance to non-European Union states that are willing to embark upon a course of improved co-ordination. The Report provides a basic introduction to the Interim Agreements that deals with their history and ratification. The Report then explains the general principles of non-discrimination and the extension of bilateral and multilateral agreements. Finally the Report deals with each article of the Interim Agreements one at a time, illustrating the similarities and differences between these two Agreements.

⁴⁶ Article 2 of both Protocols

⁴⁷ Article 1 of both Protocols

CHAPTER FOUR

THE EUROPEAN CONVENTION ON SOCIAL AND MEDICAL ASSISTANCE

INTRODUCTION

The European Convention on Social and Medical Assistance is intended to operate alongside the two Interim Agreements. As explained in Chapter Three, the Interim Agreements exclude ‘public assistance’, which is in turn covered by the European Convention on Social and Medical Assistance. The Interim Agreements plus the European Convention on Social and Medical Assistance therefore complement each other in order to ensure the international co-ordination of the full range of social protection schemes. As with the Interim Agreements this Convention is also supplemented by a Protocol concerning the rights of refugees and an Explanatory Report prepared by the Committee of Experts for Co-ordination in the Field of Social Security (‘Committee of Experts’). This Explanatory Report was adopted by the Council of Europe’s Committee of Ministers, making it an official document of the Council of Europe.

This chapter focuses upon the European Convention on Social and Medical Assistance⁴⁸. In this chapter you will find the following sections:

- 4.1 The history of the European Convention on Social and Medical Assistance
- 4.2 The Substance of the European Convention on Social and Medical Assistance
- 4.3 The Protocol
- 4.4 The Explanatory Report

4.1 The History of the European Convention on Social and Medical Assistance

In Brussels on 17th March 1948 five countries (Belgium, France, Luxembourg, the Netherlands and the United Kingdom) signed a Treaty on economic, social and cultural collaboration and collective self-defence. This treaty included the promise that member states would collaborate in the social field. As a result of this promise a ‘Convention on Social and Medical Assistance’ was signed by these five countries in Paris on 7th November 1949. This convention ensured the principle of equality of treatment in relation to the social assistance schemes falling within its material scope. In 1950 the Council of Europe’s Committee of Experts on Social Security Questions concluded that this multilateral convention should be extended to all the member states of the Council of Europe. This in turn led to the drafting of the Council of Europe’s European Convention on Social and

⁴⁸ A list of signatures and ratifications to the Convention as of 1st September 2003 is attached (Appendix II). For the actual list as well as for the references to the texts of the Convention, the Protocol and the Explanatory Report see Appendix I.

Medical Assistance. The Convention was signed together with the Interim Agreements in Paris on 11th December 1953. As the Interim Agreements it came into force on 1st July 1954.

4.2 The Substance of the European Convention on Social and Medical Assistance

4.2.1 The Material Scope of the Convention: What is Social and Medical Assistance?

Social and medical assistance is defined by the Convention as follows: “*Assistance means in relation to each Contracting Party all assistance granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition, other than non-contributory pensions and benefits paid in respect of war injuries or injuries due to foreign occupation.*”⁴⁹

This describes schemes that focus upon those who are so poor that they cannot afford a basic standard of living and/or are unable to afford the medical care or attention they may need. These schemes are typically funded from central or regional funds and are non-contributory in nature, in other words the recipient is not expected to have made any direct or indirect financial contribution to the scheme’s financing. This definition covers schemes that deal with the general risk of need or poverty by paying benefits to those who have means below a certain amount. The benefits covered by the Convention may be cash benefits or benefits in-kind.

The definition of social and medical assistance provided by the Convention must be understood in the context of the Interim Agreements, hence the definition’s express exclusion of non-contributory pensions. Non-contributory pensions are those long-term benefits paid to someone because they are old, invalid or have lost the breadwinner of their family; these pensions are covered by the European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors. Therefore, ‘social assistance’ describes schemes that are not connected to any particular social risk. An example of a social assistance scheme would be a general guaranteed minimum income whereby all persons with a per capita family income below 40 EURO per week are given a benefit to make up their family income to that amount. This benefit is paid because they are poor. If the benefit were linked to a particular risk, for example it is a condition of entitlement that the claimant be permanently incapacitated for work then this would be an invalidity pension and covered by the Interim Agreement thereon. ‘Medical assistance’ applies to medical treatment to which entitlement depends upon a ‘needs test’, more commonly called a means-test. Medical treatment that is not subject to such a test is covered by the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors⁵⁰.

The position as regards the precise material scope of the Convention is the same as that of the Interim Agreements; all the schemes covered by the Convention are listed in Annex I to the Convention⁵¹. This Annex represents an *exhaustive list* of all the schemes covered by the Convention and contracting parties are obliged to notify the Secretary General of the Council

⁴⁹ Article 1 of the Convention

⁵⁰ Article 1 of the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors

⁵¹ Article 2(b) of the Convention

of Europe whenever new law or regulation comes into being⁵². There is no time limit upon when this notification has to be made.

The Convention, like the Interim Agreements, expressly excludes benefits paid in respect of war injuries and injuries stemming from foreign occupation⁵³. This is because these benefits are inherently tied to a person's sense of national identity.

4.2.2 Two Leading Principles

The European Convention on Social and Medical Assistance advances two leading principles. The first is that nationals of the contracting parties should be treated equally in respect of any claims for social or medical assistance. The second is that no national of a contracting party should be deported or repatriated from another contracting party just because that person is in need of social or medical assistance.

4.2.3 The First Principle: Equality of Treatment

The equality of treatment required by the Convention is based upon nationality⁵⁴. The nationals of one contracting party will be entitled to the same benefits, in the same amounts and under the same conditions as nationals of the contracting party in which they are residing. A person is entitled to equal access to social and medical assistance in another contracting party provided s/he fulfils the following conditions:

- i) **'s/he is national of a contracting party'**: the Convention expressly states that proof of nationality shall be determined according to the rules in the state of origin. State of origin is defined by the Convention as the person's home state⁵⁵. Each contracting party must send a notification to the Secretary General of the Council of Europe describing how that contracting party defines "national". This notification is then sent to all the other contracting parties⁵⁶.
- ii) **'lawfully present'**: this concept is not defined within the Convention but left to the rules and regulations in operation in the contracting party where the person is claiming assistance. The national rules on lawful presence within a contracting party will of course be influenced by international law, such as international conventions on asylum seekers and refugees as well as international bilateral/multilateral treaties. The Convention does define the concept of 'lawful *residence*' in the context of its second basic principle, that of non-repatriation. From this it is logical that 'lawful presence' has a broader or wider meaning than 'lawful residence', after all holiday makers are lawfully present in a contracting party provided they have all the appropriate visa's etc.
- iii) **'without sufficient resources'**: the test of a person's resources is to be conducted according to the rules in the contracting party where the assistance

⁵² Article 16 of the Convention

⁵³ Article 2(a)(i) of the Convention

⁵⁴ Article 1 of the Convention

⁵⁵ Article 3 of the Convention

⁵⁶ Article 2(a)(ii) of the Convention

is being claimed. This must be the same test that is imposed upon nationals of that contracting party.

It should be noted that no minimum periods of presence or residence are required before the right to equal treatment is granted.

The costs of paying social assistance to nationals from other contracting parties is borne by the state in which the benefit is provided⁵⁷. However, the Convention provides that the contracting parties undertake, so far as their laws and regulations permit, to help each other to recover the full cost of assistance as far as possible from third parties or from persons who are liable to contribute to the cost of maintenance of the person concerned⁵⁸.

This requires each contracting party to help other contracting parties that have paid benefits to a person residing in their country in the recovery of debts and other monies owed to that assisted person by individuals in the former contracting party's territory. These debts include cash lent by the assisted person or money owed to that person in respect of goods and services s/he may have provided. It includes any compensation that may be due to the assisted person in respect of injuries s/he may have suffered as a result of negligence by their employer or some other person. It further comprises of any maintenance payments due to the assisted person from their ex-spouse or other family members. The Convention only says that states must act "*so far as their laws and regulations permit*" which means that they are not obliged to develop any new laws or agreements.

4.2.4 The Second Principle: Non-repatriation

The principle of non-repatriation obliges the contracting parties not to repatriate a lawfully resident national of another contracting party on the sole ground that he is in need of assistance⁵⁹.

But the Convention does not prevent a contracting party from repatriating people on any other grounds, even if the person in question is also need of social or medical assistance⁶⁰. For example it does not prevent repatriation following a criminal conviction or on the grounds of the protection of national security.

The ban on repatriation on the sole ground of a person being in need of assistance is not an absolute ban. Contracting parties may repatriate a person solely because s/he is in need of assistance if that person:

- i) **has not been continuously resident** in the territory of the state in which the benefit is claimed for at least 5 years if that person entered that state before reaching 55 years of age or for at least 10 years if s/he entered after s/he were 55 years of age⁶¹: according to the Convention a person is lawfully resident in a state if that person is in possession of a current and valid permit or other form of permission from the contracting party in which s/he resides⁶². The

⁵⁷ Article 4 of the Convention

⁵⁸ Article 5 of the Convention

⁵⁹ Article 6(a) of the Convention

⁶⁰ Article 6(b) of the Convention

⁶¹ Article 7(a)(i) of the Convention

⁶² Article 11(a) of the Convention

documents that amount to such permits or permissions are listed in Annex III to the Convention. The Convention also defines ‘continuous residence’⁶³. It states that an absence of less than 3 months will not prevent residence being continuous. Absence of six months or more will automatically be considered as an interruption of continuous residence. Absence of between 3 and 6 months will not necessarily be held to interrupt continuous residence, this will be a matter to be decided in each individual case. In deciding whether or not an absence of 3 to 6 months interrupts continuous residence the Convention states that the contracting party wishing to deport the person must consider that person’s intention to return to that contracting party and how well that person has preserved his/her ties with the contracting party whilst s/he has been away. It is important to note that any periods during which a person has been claiming social or medical assistance benefits from the state wishing to deport him/her will not be counted as periods of residence unless those benefits related to medical care for short-term or acute illnesses⁶⁴.

- ii) s/he is in a **fit state of health** to be transported⁶⁵,
- iii) s/he has **no close ties** in the territory in which s/he is resident⁶⁶: ‘close ties’ are not defined by the Convention but it is generally accepted that they include family, cultural and economic ties, and
- iv) there are **no objections on humanitarian grounds**⁶⁷: the Convention does not define what is meant by ‘humanitarian grounds’ but one can assume that it will include considerations such as the likely treatment of a person by the authorities in the state to which that person is being deported as well as the distance and/or mode of transport of the deportation.

All four of these conditions must be met before a contracting party may repatriate someone solely because that person is in need of assistance. Furthermore the contracting parties “*agree not to have recourse to repatriation except in the greatest moderation*”⁶⁸. It is important to remember that even if a person fulfils all of the above conditions the contracting party is not obliged to repatriate him/her. The same general principle applies to the Convention as to the Interim Agreements, that is that the states are always free to provide a system more favourable than that advanced in the Convention⁶⁹.

The costs of repatriation are to be borne by the contracting party deporting the person⁷⁰. The contracting party to which the individual is being repatriating must accept that person back⁷¹. Any contracting parties through which the deported person must traverse in order to be repatriated must allow that person unimpeded passage through their territory⁷².

The Convention obliges the deporting state to contact the diplomatic or consular authorities of the contracting party to which the person is due to be deported⁷³. If the contracting party

⁶³ Article 13(b) of the Convention

⁶⁴ Article 14 of the Convention

⁶⁵ Article 7(a)(ii) of the Convention

⁶⁶ Article 7(a)(iii) of the Convention

⁶⁷ Article 7(b) of the Convention

⁶⁸ Article 7(b) of the Convention

⁶⁹ Article 18 of the Convention

⁷⁰ Article 8(a) of the Convention

⁷¹ Article 8(b) of the Convention

⁷² Article 8(c) of the Convention

⁷³ Article 10(a) of the Convention

to which the person is being repatriated does not accept that the person in question is one of its nationals, then that contracting party must send a disclaimer to the repatriating state within 30 days of being contracted by the deporting state or as soon as possible after that deadline⁷⁴. It will then be assessed whether or not the person in question is in fact a national of the state of destination. This will be done using the rules and regulations in operation of the state of destination. Any dispute regarding this matter will be resolved through the dispute mechanism described below in section 4.2.6.

4.2.5 Annexes and Reservations

Annex I of the Convention sets out in relation to each contracting party the social and medical assistance schemes to which the Convention applies⁷⁵.

The contracting parties are allowed to make reservations for the application of the social and medical assistance schemes listed in Annex I. These reservations are contained in Annex II of the Convention⁷⁶. There are no restrictions imposed by the Convention which reservations may be made. The only rule for reservations is that all reservations concerning schemes that are already in existence at the time a state ratifies the Convention must be declared at the time of ratification and reservations concerning any new scheme that comes into existence after ratification must be made when it is notified to the Secretary General of the Council of Europe⁷⁷.

Annex III serves to facilitate the application of the Convention by establishing a list of documents recognised as affording proof of residence (see 4.2.4 of this Short Guide).

The Annexes I to III constitute an integral part of the Convention⁷⁸.

4.2.5 Enforcement and Dispute Resolution

There is no supervision mechanism applied to the Convention. There is no judicial body overseeing its implementation as there is with the European Convention on Human Rights. Neither is there a regular system of non-judicial supervision through the submission of national reports as there is with the European Code of Social Security. However, the Committee of Experts meets regularly to discuss the implementation of the Convention and the interpretation to be given to its provisions⁷⁹. If there is a dispute between any of the contracting parties those parties must first attempt to resolve any problems by negotiation⁸⁰. If this fails a system is established within the Convention that deals with the selection of an appropriate arbitral body or arbitrator⁸¹. The decision of the arbitral body or arbitrator is then final and binding upon the parties⁸².

⁷⁴ Article 9 of the Convention

⁷⁵ Article 2(b) of the Convention

⁷⁶ Article 2(b) of the Convention

⁷⁷ Article 16(b) of the Convention

⁷⁸ Article 19 of the Convention

⁷⁹ For a brief description of the Committee of Experts see the Introduction to Chapter Three, above

⁸⁰ Article 20(a) of the Convention

⁸¹ Article 20(b) of the Convention

⁸² Article 20(c) of the Convention

4.2.6 Implementation

There are no detailed provisions for the implementation of the Convention. The Convention merely requires the administrative, consular and diplomatic authorities of the contracting parties to offer each other all possible assistance in its administration⁸³. Precise rules on implementation are not really necessary in the Convention given that it does not have to deal with highly technical areas of social security co-ordination such as the aggregation of periods of insurance or the payment of social security benefits in other contracting parties.

4.2.7 Ratification and Entry into Force

States wishing to ratify the Convention must deposit an instrument of ratification with the Secretary General of the Council of Europe⁸⁴. The Convention will then enter into force in relation to that state on the first day of the following month⁸⁵. From this date nationals of the new contracting party will be entitled to social and medical assistance in other contracting parties and nationals of other contracting parties will be entitled to social and medical assistance in the new contracting party. Non-member states of the Council of Europe may be invited to accede to the Convention by the Council of Europe's Committee of Ministers⁸⁶.

4.2.8 Denunciation

Any of the contracting parties are free to denounce the Convention after an initial period of two years or a subsequent yearly period provided that they give written notification at least 6 months before that date⁸⁷ (the anniversary of the Convention entering into force for each contracting party). Unlike the Interim Agreements there are no provisions within the Convention obliging contracting parties which denounce the Convention to continue to pay benefits that have already been awarded under its provisions.

4.3 The Protocol

The Protocol to the Convention entered into force together with the Convention on 1st July 1954 and extends the first principle of the Convention, the principle of equal treatment, to include refugees⁸⁸. The definition of 'refugee' in the Protocol refers to the definition in the Geneva Convention on the Status of Refugees of 1951⁸⁹. This extension means that each refugee shall be treated in the same way as any other national of a contracting party. They are therefore entitled to equal access to social and medical assistance benefits.

The second principle of the Convention, the principle of non-repatriation, is not extended by the Protocol⁹⁰ as refugees cannot be repatriated to the country they had fled because this would be in breach of the Geneva Convention

⁸³ Article 15 of the Convention

⁸⁴ Article 21(a) of the Convention

⁸⁵ Article 21(c) of the Convention

⁸⁶ Article 22(a) of the Convention

⁸⁷ Article 24 of the Convention

⁸⁸ Article 2 of the Protocol

⁸⁹ Article 1 of the Protocol

⁹⁰ Article 3(1) of the Protocol

As soon as a person ceases to be classified as a refugee they are liable to repatriation provided they fulfil the conditions described in section 4.2.4 above. For the purposes of the Convention their period of lawful residence will commence from the day on which they cease to be a refugee⁹¹.

4.4 The Explanatory Report

The Explanatory Report on the Convention was prepared by the Committee of Experts and adopted on the 21st November 2001 by the Committee of Ministers. It is an official document of the Council of Europe providing an explanation of how the Convention works and the meaning of the terms contained therein.

⁹¹ Article 3(2) of the Protocol

CHAPTER FIVE

THE EUROPEAN CONVENTION ON SOCIAL SECURITY

INTRODUCTION

Both the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors and the Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors (hereinafter 'the Interim Agreements') were concluded in 1953. They are mainly concerned with equality of treatment for nationals of the contracting parties. They were intended, from the outset, to be partial instruments only and, as their titles indicate, provisional measures. Thus in 1959 the then 15 member states of the Council of Europe resolved to draft a multilateral convention to co-ordinate their social security legislation. The new European Convention on Social Security was opened for signature at Paris on 14th December 1972 and entered into force on 1st March 1979.

The European Convention on Social Security (hereinafter 'the Convention') was a momentous step forward in the co-ordination of social security within Europe. Whereas the Interim Agreements are only concerned with the basic principle of equality of treatment, the Convention applies all four basic principles of international social security co-ordination. Whilst drafting the Convention particular regard was had to Regulation 3/57 of the European Communities on social security for migrant workers and to the work taking place on the revision of this Regulation which eventually resulted in the existing Regulation 1408/71. Despite this influence the Convention is still a unique document. Firstly, at the time the Convention was opened for signature, its personal scope extended considerably beyond that of European Communities' co-ordination regulations. For example the regulations in operation in the European Communities at that time did not cover self-employed persons and still do not cover non-active persons whereas these groups were immediately afforded protection by the Convention. Secondly, the Convention is divided into articles that are immediately effective as soon the Convention is ratified and other articles that will only come into force when they are specifically agreed between the contracting parties through separate bilateral or multilateral agreements. The articles that are not immediately effective therefore represent suggestions or models for bilateral or multilateral agreements between the contracting parties. This structure ensures that the basic rights of migrants are immediately protected whilst simultaneously providing contracting parties with considerable flexibility with regards to other aspects of international social security co-ordination.

The Convention is accompanied by a Supplementary Agreement for the Application of the Convention (hereinafter 'the Supplementary Agreement'). This instrument covers the practical application of the Convention. It lays down how the relevant authorities and institutions in the contracting parties must interact in order to ensure the smooth and effective running of the co-ordination process. It describes the sort of information that has to be exchanged between contracting parties and how competent authorities and institutions should deal with each other. Like the Convention the Supplementary Agreement is divided into provisions that are immediately effective and those that represent models for bilateral or

multilateral agreements. If a state ratifies the Convention it must also ratify the Supplementary Agreement.⁹²

The Committee of Experts for Co-ordination in the Field of Social Security (hereinafter ‘the Committee of Experts’) prepared a Protocol to the Convention which was intended to extend its personal scope. This Protocol was opened for signature at Strasbourg on 11th of May 1994, it requires ratification by at least two member states but has not yet come into force⁹³.

An Explanatory Report has been prepared on the Convention by the Committee of Experts⁹⁴. Although this Explanatory Report does not provide an authoritative interpretation of the text of the Convention it has been adopted by the Committee of Ministers of the Council of Europe as an official document. The Explanatory Report provides a general over-view of the Convention before commenting on its provisions one by one. This Explanatory Report provides a more detailed description of the Convention than that offered by this short guide and is the recommended source for any questions that arise from the following chapter.

In addition, the Committee of Experts also adopted a Guide to the application of the Convention and the Supplementary Agreement⁹⁵ which is intended to facilitate the tasks of officials in institutions and other social security administrations when applying the Convention and the Supplementary Agreement. This Guide contains the model forms for the application of the immediately applicable provisions of the Convention and the Supplementary Agreement.

This chapter of the short guide deals with both the Convention and as far as necessary the Supplementary Agreement thereto. This Chapter contains the following sections:

- 5.1 The material scope of the Convention
- 5.2 The personal scope of the Convention
- 5.3 The equal treatment of nationals
- 5.4 The payment of benefits abroad
- 5.5 The provisions of the Convention which relate to all risks
- 5.6 Specific provisions governing the various social risks
- 5.7 Implementation and administration of the Convention
- 5.8 Ratification and entry into force
- 5.9 Denunciation
- 5.10 Dispute resolution
- 5.11 The Protocol
- 5.12 The Explanatory Report and the Guide to the Administration of the Convention

5.1 The material scope of the Convention

The Convention applies to all legislation concerning social security schemes relating to:⁹⁶

⁹² A list of signatures and ratifications to the Convention and the Supplementary Agreement as of 1st September 2003 is attached (Appendix II). For the reference to the actual list as well as for the references to the texts of the Convention and the Supplementary Agreement see Appendix I.

⁹³ A list of signatures and ratifications to the Protocol as of 1st September 2003 is attached (Appendix II). For the reference to the actual list as well as for the references to the text of the Protocol see Appendix I.

⁹⁴ For the reference to the text of the Explanatory Report see Appendix I.

⁹⁵ For the reference to the text of the Guide see Appendix I.

⁹⁶ Article 2(1)(a) to (h) of the Convention

- i) sickness and maternity benefits,
- ii) invalidity benefits,
- iii) old age benefits,
- iv) survivors' benefits,
- v) benefits for occupational injuries and diseases,
- vi) death grants,
- vii) unemployment benefits, and
- viii) family benefits.

The Convention applies to all general and special schemes whether contributory or non-contributory⁹⁷. It does not apply to medical or social assistance⁹⁸. It therefore only applies to schemes that are connected with the social risks described at (i) to (viii) above. It does not apply to schemes that are based purely on the risk of need or poverty⁹⁹. It also excludes special schemes for civil servants¹⁰⁰. It does not exclude civil servants per se, only schemes that restrict their membership to civil servants. Therefore civil servants will be covered by the Convention if they are covered by the general scheme for workers¹⁰¹. Benefits paid to victims of war and its consequences are also excluded from the scope of the Convention¹⁰², this is because these schemes are closely tied to a person's national identity.

The material scope of the Convention is the same as the combined scope of the Interim Agreements and just as with the Interim Agreements, the Convention contains an exhaustive list of all the social security branches to which it applies¹⁰³. This list is to be found in Annex II of the Convention. The contracting parties are under a duty to keep this list up to date.

5.2 The personal scope of the Convention

The Convention applies to everyone who has been covered by the social security legislation of more than one of the contracting parties, provided that that person:¹⁰⁴

- i) is a national of one of the contracting parties,
- ii) is a stateless person or refugee, or
- iii) is a member of the family and/or survivor of one of the above groups of persons.

Although the Convention excludes the special schemes for civil servants, it expressly includes certain categories of civil servants covered by a general scheme of a contracting party with the exception of members of the diplomatic missions and consular posts¹⁰⁵. The Convention covers an extremely wide range of people, including employees, self-employed persons, non active persons etc. The only requirement is that a person has been covered by the social security system of two or more contracting parties. Sometimes distinctions are

⁹⁷ Article 2(2) of the Convention, for a definition of contributory/non-contributory benefits see Article 1(y) of the Convention and section 1.7 of this short guide

⁹⁸ Article 2(4) of the Convention

⁹⁹ For a definition of social and medical assistance see sections 1.7, 3.2.2 and 4.2.1 of this short guide

¹⁰⁰ Article 2(4) of the Convention

¹⁰¹ Article 4(1)(c) of the Convention

¹⁰² Article 2(4) of the Convention

¹⁰³ Article 3(1) of the Convention

¹⁰⁴ Article 4 of the Convention

¹⁰⁵ Article 4(1)(c) and 4(2) of the Convention

made in the Convention between different types of person, for this purpose it is important to note that the term ‘*worker*’ actually applies to both employed **and** self-employed persons¹⁰⁶.

5.3 Equal treatment of nationals

The Convention affirms the principle of equality of treatment between the nationals of contracting parties¹⁰⁷. This principle requires the contracting parties to apply their legislation to nationals of the other contracting parties in the same way as to their own nationals.

However, as regards the application of this principle to non-contributory schemes, the Convention provides, as do the Interim Agreements, that a contracting party may require nationals of other contracting parties to satisfy special residence conditions, particularly where the amount of benefits is not related to periods of residence. As these potential residence conditions vary according to the social risks the details are described in section 5.6 below.

5.4 Payment of benefit abroad

The Convention provides that invalidity, old age and survivors’ cash benefits as well as pensions in respect of occupational injuries or diseases and death grants shall not be reduced, suspended or withdrawn by reason of the fact that the beneficiary resides in the territory of another contracting party¹⁰⁸. However, exceptions to this principle are allowed, these relate to non-contributory schemes and certain special benefits.

As in relation to the equal treatment of nationals the details of the payment of benefits abroad are described in more detail in section 5.6 below.

5.5 The provisions of the Convention that relate to all risks

The following provisions relate to all of the social risks covered by the Convention and are immediately effective upon ratification by a contracting party.

5.5.1 Definitions

The Convention contains an extensive list of definitions¹⁰⁹, which are vital for the understanding and application of the Convention. These definitions include key terms such as ‘*contracting party*’, ‘*legislation*’, ‘*residence*’ and ‘*temporary residence*’, ‘*worker*’ and ‘*frontier worker*’, ‘*periods of insurance*’ and ‘*periods of residence*’ as well as ‘*family allowances*’ and ‘*family benefits*’.

¹⁰⁶ Article 1(m) of the Convention

¹⁰⁷ Article 8 of the Convention

¹⁰⁸ Article 11 of the Convention

¹⁰⁹ Article 1 of the Convention

5.5.2 Relationship with other International Instruments

The provisions of the Convention replace all bilateral and multilateral social security coordination agreements existing between the contracting parties¹¹⁰ except for:

- i) any conventions adopted by the ILO¹¹¹,
- ii) any provisions of the European Union¹¹²,
- iii) any bilateral or multilateral agreements that the contracting parties wish to preserve¹¹³. The contracting parties must expressly agree to keep the particular agreements in force between them and these agreements must be listed in Annex III to the Convention. The Convention will not override these bilateral and multilateral agreements but it will apply to persons who do not fall within the personal scope of these agreements, for instance self-employed persons or non-active persons are included within the personal scope of the Convention but in the past were often excluded from bilateral agreements. The Convention will also apply in multilateral relations between states bound by any bilateral agreements that are listed in Annex III. For example, bilateral agreements exist between State A and State B, State B and State C as well as State C and State A. All three states are linked by bilateral agreements but if someone were to have lived in States A, B and C this would be classified as a 'multilateral relationship' to which the Convention would apply and not the individual bilateral agreements.

5.5.3 Determining the Applicable Legislation

The rules in the Convention for determining the applicable legislation apply in the same way to all the risks covered by the Convention. The contracting party whose legislation is applicable is known as the "*competent state*".

The rules on the determination of the applicable legislation are as follows¹¹⁴:

Employees: the general rule is that the applicable legislation shall be that of the contracting party in which the person is employed, even if that person resides within the territory of a different contracting party¹¹⁵. The following exceptions apply to this rule:

- i) posting or secondment of employed persons abroad: it may be that an employer wishes to send one of his/her employees to perform work in another contracting party or to work in one of its offices or subsidiaries based in another state. This is referred to as a period of secondment or posting. Provided that the employee is sent to another contracting party for 12 months or less and is not sent out to replace an employee who has just finished a

¹¹⁰ Article 5(1) of the Convention

¹¹¹ Article 6(1) of the Convention

¹¹² Article 6(2) of the Convention

¹¹³ Article 6(3) of the Convention

¹¹⁴ Please note that this short guide only deals with social security schemes subject to compulsory affiliation and not with voluntary insurance or optional continued insurance. The following rules on the determination of the applicable legislation do not apply to these schemes and special provisions relating to these schemes can be found within Article 16 of the Convention.

¹¹⁵ Article 14(a) of the Convention

period of secondment, then the employee will remain covered by the legislation of the state from which s/he has been sent¹¹⁶. This employee will further remain covered by the legislation of the contracting party from which s/he was sent if, due to unforeseen circumstances, his/her secondment has to be increased by a further period of up to 12 months and the competent authority of the other contracting party agrees to it¹¹⁷.

- ii) persons employed in two or more contracting parties other than in international transport: if the person in question resides in one of the states in which s/he carries out work or has different employers in different states then s/he will be covered by the legislation of his/her state of residence¹¹⁸. If s/he does not reside in any of the states in which s/he is occupied then s/he will be covered by the legislation of the state in which his/her employer has its principal place of business or its place of residence¹¹⁹.
- iii) special provisions apply to:
 - employed persons in international transport¹²⁰ and in frontier undertakings¹²¹,
 - for sailors¹²² and
 - for civil servants¹²³ and diplomatic missions and consular posts¹²⁴.

Self-employed persons: the general rule is that self-employed persons are covered by the contracting party in which they pursue their self-employed activity, even if they reside in another contracting party¹²⁵. The following exceptions apply to this rule:

- i) The first exception takes account that some states, at least in the past, provide social security protection for employees but not for self-employed persons. If a self-employed person performs his/her activities in a contracting party that does not have any social security legislation to cover self-employed persons but that person resides in another contracting party that does have a scheme for self-employed persons, then s/he will be covered in their state of residence¹²⁶ as if the were self-employed there¹²⁷.
- ii) The second exception takes account of the fact that some states base entitlement to social security on residence rather than economic activity. A person resides in State A and is self-employed in State B, both states are contracting parties to the Convention. If both states base entitlement to social security protection on residence then the person in our example would not be insured in State B where s/he pursue his/her activity, but in State A where s/he resides¹²⁸.

¹¹⁶ Article 15(1)(a)(i) of the Convention

¹¹⁷ Article 15(1)(a)(ii) of the Convention

¹¹⁸ Article 15(1)(c)(i) of the Convention

¹¹⁹ Article 15(1)(c)(ii) of the Convention

¹²⁰ Article 15(2) of the Convention

¹²¹ Article 15(1)(d) of the Convention

¹²² Article 14(b) and 15(2) of the Convention

¹²³ Article 14(d) of the Convention

¹²⁴ Article 17 of the Convention

¹²⁵ Article 14(c) of the Convention

¹²⁶ Article 15(3)(a)(i) of the Convention

¹²⁷ Article 15(4) of the Convention

¹²⁸ Article 15(3)(a)(ii) of the Convention

Special rules also apply to those who pursue self-employed activities in two or more contracting parties:

- i) If these people reside in one of the contracting parties in which they also pursue some of their self-employed activities then they will be covered in their state of residence¹²⁹. If the contracting party in which they reside bases entitlement to social security protection on residence then they will be insured in their state of residence even if they do not pursue any economic activity there¹³⁰.
- ii) Where self-employed people do not pursue any of their self-employed activities in the territory of the contracting party where they are resident or if that contracting party does not have any legislation applicable to self-employed persons then the contracting parties must agree between themselves which legislation shall be applicable¹³¹.

Special provisions also apply to self-employed persons who follow their occupation on board a ship¹³².

Other persons: the Convention contains only provisions concerning the applicable legislation for employees and self-employed persons. Therefore other persons, such as economically non-active people or students, are covered by the national laws of each contracting party.

Possible derogations: The Convention enables the competent authorities of the contracting parties to mutually agree exceptions to the rules on the determination of the applicable legislation in the interest of the persons concerned¹³³.

5.6 Specific Provisions governing the various Social Risks covered by the Convention

This section explains how the Convention deals with the social risks falling within its material scope.

5.6.1 Sickness and Maternity

The chapter of the Convention on sickness and maternity covers benefits in-kind, such as medical treatment, pharmaceuticals, hospital treatment etc. It also covers cash benefits, paid for short-term incapacity for work. This incapacity may stem either from illness or from pregnancy/childbirth. The table below shows which of the Convention's provisions take immediate effect in relation the risks of sickness and maternity and which do not:

¹²⁹ Article 15(3)(b) of the Convention

¹³⁰ Article 15(3)(b) of the Convention

¹³¹ Article 15(3)(c) of the Convention

¹³² Article 14(b) and 15(2)(b) of the Convention

¹³³ Article 18 of the Convention

IMMEDIATELY EFFECTIVE		<u>NOT</u> IMMEDIATELY EFFECTIVE	
Art. 8	Equal treatment for nationals of all contracting parties		
Art 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity		
Art. 19	Adding together of periods		
		Art. 20	Provision of benefits in-kind and cash benefits for those who <i>reside permanently</i> in a contracting party other than the competent state
		Art. 21	Provision of benefits for those who <i>reside temporary</i> in, <i>return to</i> or <i>go for treatment</i> to a contracting party other than the competent state
		Art. 22(1)	Cases in which the legislation of a contracting party makes the provision of benefits in-kind to members of the family conditional on those family members being personally insured
Art. 22(2) to (4)	Calculation of cash benefits		
		Art. 23	Provision of benefits in-kind for <i>unemployed persons</i> who are resident in a contracting party other than the competent state
		Art. 24	Provision of benefits in-kind for <i>pensioners</i>
Art. 25	Rules for the application of special provisions in the legislation of certain contracting parties		
Art. 26	The need for bilateral or multilateral agreements in order to apply the non-immediately effective provisions		

Equal treatment for nationals of all contracting parties: the principle of equality of treatment applies unconditionally to sickness benefits whether in cash or in-kind and whether contributory or non-contributory. This means that those who are covered by the Convention who reside within the territory of a contracting party are subject to the same obligations and entitled to the same rights as nationals of the contracting party in which they reside¹³⁴. This applies also with regards to *contributory* benefits for the social risk of maternity. However for *non-contributory* maternity benefits the amount of which does not depend on the length of periods of residence a contracting party is free to make equal treatment subject to minimum periods of residence within that contracting party¹³⁵. The Convention states that this minimum period may not be longer than six months. This does not mean that contracting parties *must* impose minimum periods of residence only that they *may* do so provided that the period imposed is less than six months. Where contracting parties do impose minimum residence conditions on equal treatment in respect of non-

¹³⁴ Article 8(1) of the Convention

¹³⁵ Article 8(2)(a) of the Convention

contributory maternity benefits they must list the benefits concerned in Annex IV of the Convention¹³⁶.

Rules preventing the overlapping of benefits with other benefits, other income or occupational activity: the Convention expressly states that its provisions can not be relied upon to claim several benefits relating to one and the same sickness or maternity or to one and the same period of compulsory insurance¹³⁷. Furthermore, many states have rules limiting the overlapping of similar benefits or the overlapping of benefits with income or with occupational activity. These rules may reduce the benefit paid, suspend the benefit for a specified period or even terminate the benefit altogether. The Convention states that when applying these rules a contracting party is entitled to take into account any benefits or income received in other contracting parties as well as any occupational activity conducted in other contracting parties¹³⁸. If this would lead to a reduction in two or more contracting parties the Supplementary Agreement provides that the amount affected shall be divided by the number of benefits concerned¹³⁹.

Adding together of periods: where contracting parties lay down minimum periods of insurance before any benefits are awarded under a scheme¹⁴⁰ or before a person is entitled to join a compulsory scheme¹⁴¹ then these contracting parties must consider periods of insurance (or in case of non-contributory legislation of residence after the age of 16) completed in other contracting parties. 'Periods of insurance' is defined as periods of contributions, employment, occupational activity or residence as defined under the legislation of the contracting party in which they are completed¹⁴². This means that such periods completed in other contracting parties must be added together according to the principle of aggregation. For example State A and State B have both ratified the Convention. In State A entitlement to benefits is based on residence and sickness cash benefits will be paid only after the completion of 3 years of permanent residence after the age of 18 years. In State B entitlement to sickness cash benefits is based on periods of employment, 12 months of employment are required before the benefit is paid. A person lives in State A from birth until the age of 20 years and then moves to State B where he works for 6 months before falling ill and becoming temporarily unable to work. He claims sickness benefit in State B which is obliged to take into consideration the 6 months he has worked in State B and the 2 years he was resident in State A.

Calculation of cash benefits: if the amount of cash benefit is based on average earnings the competent state need only consider earnings received whilst the person was covered under its legislation. In other words when calculating average earnings for the purpose of determining the amount of benefit a contracting party need not take into consideration earnings received in other contracting parties¹⁴³. However, where the amount of benefit varies according to the number of family members, a contracting party must take into account any family members who are resident in the territory of other contracting parties¹⁴⁴.

¹³⁶ Article 8(4) of the Convention

¹³⁷ Article 13(1) of the Convention and Article 9 of the Supplementary Agreement

¹³⁸ Article 13(2) of the Convention

¹³⁹ Article 8 of the Supplementary Agreement

¹⁴⁰ Article 19(1) of the Convention

¹⁴¹ Article 19(2) of the Convention

¹⁴² Article 1(s) of the Convention

¹⁴³ Article 22(2) of the Convention

¹⁴⁴ Article 22(3) of the Convention

Rules for the application of special provisions in the legislation of certain contracting parties: it is possible that a state may make the payment of sickness cash benefits or the provision of medical treatment dependent upon the origin of the sickness or injury. For example medical treatment will not be provided for those who have suffered an accident in another country. The Convention states that conditions relating to the origin of a person's sickness or injury shall not be applied to those who fall within its personal scope¹⁴⁵. The Convention further states that where a contracting party limits the duration for which benefits are provided that contracting party is free to count periods during which similar benefits have been provided in other contracting parties¹⁴⁶.

The need for bilateral or multilateral agreements in order to apply those provisions which are not immediately effective: the Convention describes the provisions on sickness and maternity benefits that are not immediately effective and makes the application of these provisions subject to bilateral or multilateral agreements to be made between the contracting parties¹⁴⁷. The provisions that are not immediately effective deal with issues such as the distribution of benefits in-kind and cash benefits to those who reside permanently or temporary within a contracting party other than the competent state, for example someone lives in State A (state of residence) but works in State B (competent state). In this situation the model provisions in the Convention suggest that benefits in-kind are provided in the state of residence according to the legislation in the state of residence but at the expense of the competent state¹⁴⁸. In other words the state of residence provides the benefits but is refunded by the competent state. In the case of cash benefits the Convention suggests that these be paid by the competent state according to the rules in the competent state¹⁴⁹.

The Convention specifies some provisions that should appear within the bilateral or multilateral agreements that are needed to realise those provisions that are not immediately effective. These provisions include¹⁵⁰: specifying the categories of persons to whom the agreements apply, stating the maximum period during which benefits in-kind will be provided by one contracting party at the expense of another and the creation of rules to prevent the overlapping of benefits. The Convention expressly states that contracting parties are free to agree that no refunds need be made between their institutions. This relates to those situations where benefits are provided by one contracting party at the expense of another, such as the provision of benefits in-kind to persons who reside in a contracting party other than the competent state.

5.6.2 Invalidity, Old Age and Death (Pensions)

The Convention deals with pensions for these three social risks in much the same way. This short guide shall therefore also deal with all three risks together, any major difference in how they are treated will be brought to the reader's attention. In this context a pension refers to a long-term periodic benefit as opposed to a one-off lump sum benefit like a death grant.

The table below shows that nearly all provisions of the Convention relating to invalidity, old age and death take immediate effect and only one provision does not:

¹⁴⁵ Article 25(2) of the Convention

¹⁴⁶ Article 25(3) of the Convention

¹⁴⁷ Article 26(1) of the Convention

¹⁴⁸ Article 20(1)(a) of the Convention

¹⁴⁹ Article 20(1)(b) of the Convention

¹⁵⁰ Article 26(2) of the Convention

IMMEDIATELY EFFECTIVE		<u>NOT IMMEDIATELY EFFECTIVE</u>	
Art. 8	Equal treatment for nationals of all contracting parties		
Art. 11	The export of benefits		
Art. 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity.		
Art. 27	General rule		
Art. 28	Adding together of periods		
Art. 29	Determining entitlement to benefits and the calculation of benefits		
Art. 30	Additional provisions on the calculation of benefits		
Art. 31	Periods of less than one year		
		Art. 32	Periods from one to five years
Art. 33	Calculation of benefits where the person concerned does not simultaneously satisfy the conditions required by all the legislations concerned		
Art. 34	Differential supplements		
Art. 35	Aggravation of invalidity		
Art. 36	Resumption of payment of invalidity benefits after suspension or suppression		
Art. 37	Conversion of invalidity benefits into old age benefits		

Equal treatment for nationals of all contracting parties: the principle of equal treatment applies unconditionally to contributory invalidity, old age and survivors' pensions¹⁵¹ but this principle may be made subject to some conditions in relation to non-contributory benefits. The Convention allows contracting parties to make equality of treatment for those non-contributory benefits whose amount does not depend on the length of periods of residence subject to minimum periods of residence. This means that should a person fail to comply with these minimum periods they can be refused a benefit simply because they are not a national of the contracting party in which that benefit is claimed. Such a person may also be awarded a lower benefit than that paid to nationals or be made subject to more stringent conditions than those imposed upon nationals. The Convention sets strict limits on the longest periods of residence that a contracting party may require before a non-national becomes entitled to equality of treatment with respect to non-contributory pensions, these maximum periods are:

Invalidity: five consecutive years of residence immediately preceding the claim for the non-contributory benefit¹⁵²,

¹⁵¹ Article 8(1) of the Convention

¹⁵² Article 8(2)(b) of the Convention

Survivors: five consecutive years of residence of the deceased person immediately before the claim is made¹⁵³,

Old age: ten years of residence between the age of 16 years and pensionable age, of which it may be required that five years shall immediately precede the lodging of the claim¹⁵⁴.

The Convention further states that where a contracting party does choose to impose minimum periods of residence and a person fails to satisfy those minimum periods of residence then that person shall still be entitled to a benefit if s/he has been covered by the legislation of the competent state for at least one year. In this case the person will not receive a full benefit but a proportionally reduced benefit that reflects the amount of time that person has been resident within the territory of the competent state¹⁵⁵. When a contracting party makes equal treatment for non-contributory benefits for invalidity, old age and death subject to minimum periods of residence then it must list these benefits in Annex IV of the Convention¹⁵⁶.

The export of benefits: the general rule is that pensions for invalidity, old age and death can be exported to other contracting parties. In other words these pensions cannot be reduced, suspended or terminated or in any way affected by the fact that the recipient is resident in another contracting party¹⁵⁷. However, this general rule is subject to some exceptions. These exceptions relate principally to non-contributory benefits, this means that almost all contributory benefits can be exported¹⁵⁸. The Convention expressly states that the principle of the exportation of benefits shall not apply to:

- i) special non-contributory benefits granted to invalids who are unable to earn a living: the Convention does not define what is meant by a “*special*” non-contributory benefit¹⁵⁹
- ii) special non-contributory benefits granted to persons not entitled to normal benefits: there is no definition of “*normal benefits*” but it can be assumed that this refers to contributory benefits¹⁶⁰,
- iii) benefits granted under transitional arrangements¹⁶¹, and
- iv) special benefits granted as assistance or in case of need¹⁶².

All the benefits excluded from the principle of exportation have to be listed by the contracting parties in Annex VI of the Convention¹⁶³. Any non-contributory benefits that do not appear in Annex VI but do appear in Annex IV (benefits where the principle of equal

¹⁵³ Article 8(2)(b) of the Convention

¹⁵⁴ Article 8(2)(c) of the Convention

¹⁵⁵ The formula for the proportional reduction of the benefits can be found in Article 8(3) of the Convention.

¹⁵⁶ Article 8(4) of the Convention

¹⁵⁷ Article 11(1) of the Convention

¹⁵⁸ Please note that contributory benefits granted under the transitional arrangements will not be subject to exportation according to article 11(3)(c) of the Convention. The Convention defines ‘benefits granted under transitional arrangements’ as “*benefits granted to persons who are over a given age on the date of entry into force of the legislation applicable, or benefits granted provisionally in consideration of events that have occurred or periods that have been completed outside the current frontiers of the territory of a contracting party.*” This therefore refers to transitional measures adopted under national law, for example when a new type of old age pension scheme is gradually being introduced.

¹⁵⁹ Article 11(3)(a) of the Convention

¹⁶⁰ Article 11(3)(b) of the Convention

¹⁶¹ Article 11(3)(c) of the Convention, see also footnote 158 above

¹⁶² Article 11(3)(d) of the Convention

¹⁶³ Article 11(3) of the Convention

treatment is subject to minimum periods of residence) may be reduced if their recipient takes up residence in another contracting party¹⁶⁴. These benefits are proportionally reduced according to the length of residence of their recipient in the competent state. The same formula is used to reduce these benefits when a person fails to complete the minimum periods of residence required for equal treatment but has nonetheless been resident in the competent state for more than one year¹⁶⁵.

Rules preventing the overlapping of benefits with other benefits, other income or occupational activity: if the maintenance of acquired rights and the aggregation of insurance periods is used to determine the amount of a pension¹⁶⁶ then a number of contracting parties may be responsible for paying the same person a pension. Each contracting party will pay a pension that reflects the amount of time that person has been covered under their social security system. This means that a person might receive a similar pension from more than one contracting party as a result of the aggregation process¹⁶⁷. This forms an exception to the Convention's rules on overlapping benefits in relation to the same risk. This exception is based on the fact that such cases do not involve payment of separate benefits but simply of different portions of a composite pension. Of course, the Convention rules on overlapping will apply to benefits that have not been calculated according to the principle of aggregation, (e.g. sickness cash benefit), or with other income or occupational activity¹⁶⁸. For example an old age pension is exported from State A to State B, both are contracting parties to the Convention. The recipient of the pension, now living in State B, receives an income from work s/he is performing in State B. State A is allowed to treat that income as if it were earned in State A and reduce the pension according to the national rules on overlapping in operation in State A. If the national law of State B would also provide a reduction in this case, the Supplementary Agreement provides that each state might only take the income into account for reduction in proportion to the ratio of the periods completed in States A and B¹⁶⁹.

General rule: at the beginning of its chapter on invalidity, old age and survivors the Convention makes it clear that anyone who has been subject to the social security legislation of two or more contracting parties is entitled to coverage under the Convention, even if that person is able to claim benefits under national law alone¹⁷⁰.

Adding together of periods: For entitlement to benefit the Convention provides for the adding together of all periods of insurance, residence, employment or other occupational activity completed by the person concerned and taken into consideration under the various national legislations.

Contracting parties which *base their systems on periods of insurance* must take into account periods of insurance (or in case of non-contributory legislation, of residence after the age of 16) completed in other contracting parties¹⁷¹. The periods that are treated as periods of insurance are defined by the contracting party in which they are completed. The Convention

¹⁶⁴ Article 11(2) of the Convention

¹⁶⁵ The formula for the proportional reduction of these benefits can be found in article 8(3) of the Convention.

¹⁶⁶ See section 1.4.3 of this short guide

¹⁶⁷ Article 13(1) of the Convention

¹⁶⁸ Article 13(2) of the Convention

¹⁶⁹ Article 8(b) of the Supplementary Agreement

¹⁷⁰ Article 27 of the Convention

¹⁷¹ Article 28(1) of the Convention

states that periods of contributions, employment, occupational activity or residence¹⁷² may be treated as ‘insurance periods’ for the purpose of the Convention. For example States A and B are both members of the Convention. State A bases entitlement to an old age pension on periods of employment, demanding a minimum period of 25 years employment before a full pension is paid. State B bases entitlement to old age pension on periods of residence completed after a person reaches the age of 16 years, a person must complete at least 25 years of residence before they are entitled to a full pension. A person lives in State B until s/he is 18 years old and then starts to work in State A, where s/he lives for 42 years but is employed for only 23 of them. According to the Convention when determining whether or not this person is entitled to a pension, State A must count the 2 years of residence spent in State B as 2 years of insurance because these are classified as periods of insurance in State B.

Where a State *bases entitlement to benefits on periods of residence* it must take into account periods of insurance (or in case of non-contributory legislation of residence after the age of 16) completed under the legislation of other contracting parties¹⁷³. Note that this refers to periods of insurance completed in these state (and only to residence when dealing with non-contributory legislation). So in the example given in the previous paragraph State B, in determining entitlement to old age pension would have to add only the 23 years of employment completed in State A to the 2 years of residence completed within its own territory and not the 42 years of residence spent in State A.

Some states have special provisions for those in certain occupations, such as miners or teachers, who may be entitled to higher benefits or required to fulfil shorter periods of insurance. Where contracting parties operate such special provisions they need only aggregate periods of insurance spent in these specific occupations in other contracting parties. If the person concerned, following the adding together of all the periods s/he has spent in this occupation in all the contracting parties in which s/he has worked, is still unable to fulfil the entitlement conditions for the special provisions then that person will be dealt with under the general scheme or general provisions rather than those for the specific occupation¹⁷⁴. S/he will not therefore be deprived of any benefit at all.

Determining entitlement to benefits and the calculation of those benefits: Although the usual approach in international social security co-ordination is to ensure that only one state at a time is responsible for the provision of benefits, this is not the case with long-term benefits such as old age, invalidity and survivors’ pensions, In the case of these pensions the benefit is shared proportionally between all the contracting parties under which the person concerned has been insured. This means that the person will receive payments from several contracting parties. The calculation of the amount of pensions for old age, invalidity and survivors is a three-stage process:

Stage One: each contracting party to whose legislation the person has been subject adds up all the periods of insurance or residence completed in the other contracting parties in order to determine if that person would be entitled to a pension according to its legislation¹⁷⁵. For the purposes of survivors’ benefits the

¹⁷² Article 19(s) of the Convention

¹⁷³ Article 28(2) of the Convention

¹⁷⁴ Article 28(4) of the Convention

¹⁷⁵ Article 29(1) of the Convention

relevant periods are those completed by the deceased person and not those completed by the survivors.

Stage Two: each contracting party then calculates how much pension would have been paid to the person if *all* of the aggregated periods had been completed under its legislation. This amount is referred to as the “*theoretical amount*”¹⁷⁶. Where the amount of the benefit is not dependent on the periods completed then that fixed amount will be taken as the theoretical amount¹⁷⁷. In the case of non-contributory benefits contained within Annex IV (those benefits for which equal treatment is made conditional upon minimum periods of residence) there are special provisions for the calculation of the theoretical amount¹⁷⁸.

Stage three: each contracting party then calculates the amount of the benefit that it has to pay. Each state pays a fraction of the theoretical amount that is proportional to the amount of time the person was covered under its legislation and the amount of time that person was covered under the legislation of all the contracting parties involved in calculating the theoretical amount.

This three-stage process is best described using an example:

States A, B and C are all contracting parties to the Convention, they all base entitlement to old age pension on periods of employment. State A requires 20 years of insurance before a full pension of 800 EUR per month is paid. State B requires 15 years of insurance before a full pension of 600 EUR per month is paid. Finally, State C demands 25 years of insurance before a full pension of 1000 EUR per month is paid. A person works in State A for 10 years, State B for 5 years and State C for 10 years. This person retires in State C and claims a pension.

Stage one: *add all periods together to determine if the person is entitled to pension in each state* – the person in the example has been insured for a total of 25 years. S/he is therefore entitled to a pension in all three states.

Stage two: *calculate theoretical pension based on all periods added together* – the full pension is fixed in all three states so in State A it would be 800 EUR per month, State B 600 EUR per month and State C 1000 EUR per month.

Stage three: *calculate pension that must be paid by each state* – the total period of insurance in all three states is 25 years. The ratio of insurance periods completed in States A, B and C is 10 : 5 : 10 respectively. State A must therefore pay 10/25 of 800 EUR, totalling 320 EUR per month. State B must pay 5/25 of 600 EUR, totalling 120 EUR per month. State C must pay 10/25 of 1000, totalling 400 EUR per month. Thus the person in the example will receive a total pension of 840 EUR per month (320 + 120 + 400).

Further provisions on the calculation of benefits: the example given in the paragraph above explained how each contracting party must calculate the amount of pension for which it is responsible. In that example it was assumed that the full pension was a fixed amount. This was done for the sake of simplicity. In reality old age, invalidity and survivor’s pensions are often calculated on the basis of a person’s previous earnings or the contributions that person paid to the social security scheme. Where a contracting party pays benefits based on previous earnings or contributions then it must only take into consideration

¹⁷⁶ Article 29(2) of the Convention

¹⁷⁷ Article 29(3)(a) of the Convention

¹⁷⁸ Article 29(3)(b) of the Convention

the earnings or contributions paid in its territory¹⁷⁹. This is because states would otherwise be expected to pay pensions on the basis of contributions that they have never received but which have been paid to other contracting parties. It would also be very difficult for each contracting party to obtain details of earnings and contributions in other contracting parties. Finally it would also be unfair on those contracting parties that have a lower standard of living as they would be obliged to pay higher pensions when migrants travel to states where wages (and the costs of living) are higher

This can be shown by changing the example above as follows: in State C instead of a full pension after 25 years the pension is calculated on the basis of 2 % of the average earnings of the person for each year of insurance. For the average earnings only the earnings in State C would be taken into account (eg. 900 EUR). The pension in State C would be calculated as follows:

Stage one: *add all periods together to determine if the person is entitled to pension in each state* – the person in the example has been insured for a total of 25 years. S/he is therefore entitled to a pension.

Stage two: *calculate theoretical pension based on all periods added together* – in State C the theoretical amount for 25 years would be $25 \times 2\% = 50\%$ of 900 EUR, totalling 450 EUR per month.

Stage three: *calculate pension that must be paid by each state* – the total period of insurance in all three states is 25 years. The ratio of insurance periods completed in States A, B and C is 10 : 5 : 10 respectively. State C must therefore pay 10/25 of 450 EUR, totalling 180 EUR per month.

For those contracting parties whose legislation provides that the amount of the pension is in proportion to the periods of insurance or residence completed, as it is in the last example for State C, the Convention provides that the benefit is calculated on the basis of national law instead¹⁸⁰. State C can therefore calculate its pension directly: for 10 years the pension payable would be $10 \times 2\% = 20\%$ of 900 EUR, totalling 180 EUR (the same amount as calculated before).

Where the amount of benefit is affected by the number of people in the claimant's family, family members living in other contracting parties will be taken into account¹⁸¹.

Periods of less than one year: special rules apply to situations where someone has been insured in a contracting party for less than one year. For example States A, B, C and D have all ratified the Convention. A person is insured in State A for 5 years, B for 2 years, C for 10 months and D for 20 years. The Convention states that where someone has been insured in a contracting party for less than twelve months and that person is not entitled to a pension for these months under *national* law then the contracting party does not have to pay that person a benefit. However, although that contracting party does not have to pay a benefit any other contracting party in which that person has been insured must take the period in question into consideration when aggregating periods of insurance. So, in the example above provided that the person is not entitled to a pension under the law in State C (for these 10 months alone) then State C will not have to pay him/her a benefit. States A, B and D will still have to count the 10 months completed in State C when they are aggregating insurance periods to decide if

¹⁷⁹ Article 30(1)(a) and (1)(b) of the Convention

¹⁸⁰ Article 29(5) of the Convention

¹⁸¹ Article 30(3)

the person is entitled to a benefit (stage one) and how much the theoretical amount would be (stage two) but not for the calculation of the pension payable (stage three)¹⁸².

Periods from one to five years: a provision similar to the proceeding one was included, for old age pension purpose only, for periods from one to five years to meet the situation where large numbers of migrants work in a state for short periods only¹⁸³. But these provisions are not immediately effective and their application is subject to the conclusion of bilateral or multilateral agreements between contracting parties.

Calculation of benefits where the person concerned does not simultaneously satisfy the conditions required by all the legislations concerned: the conditions of entitlement to pensions vary from one contracting party to another, in terms of both minimum periods of insurance and the age or the degree of invalidity at which a pension is paid. It may be the case that someone who has been insured under the pension legislation of a number of contracting parties will fulfil the conditions for a pension in one or two contracting parties but even after applying the principle of aggregation they do not satisfy the conditions in others. For example, States A, B and C have all ratified the Convention. In State A the conditions for a pension are that the claimant has reached the age of 60 years and completed 20 years of insurance. In State B a person must reach the age of 60 years and have completed 15 years of insurance. Finally in State C a pension will only be paid if someone has reached the age of 65 and completed 25 years of insurance. Someone reaches their 60 birthday by which time they have completed 5 years of insurance in State A, 10 years of insurance in State B and 15 years of insurance in State C. In this case a transitional pension will be paid, the general rule is that the pension is calculated using the usual method taking into account all the periods completed in the other contracting parties including those whose conditions have not yet been met¹⁸⁴. The first step is to add together all the periods of insurance, in this case $5 + 10 + 15 = 30$ years. This means that the person is entitled to a pension in State A and State B but because of the higher pensionable age not in State C. States A and B would then calculate the proportional pension they must pay.

There are two exceptions to this general rule¹⁸⁵. The first is where a person satisfies the conditions to a pension in at least two contracting parties without there being any need to aggregate periods completed in contracting parties where that person has not satisfied the conditions, in this case no account is taken of the periods of insurance spent in those contracting parties where the conditions have not been fulfilled.

The second exception is where a person satisfies the conditions for a pension in only one state according to the national legislation alone then there is no need to apply the aggregation and in this case the national pension must be paid.

The pensions paid in these cases are only transitional ones. Every time the recipient of such a pension satisfies the conditions of entitlement in another contracting party then the pension is recalculated to reflect this¹⁸⁶.

Differential supplements: a situation may arise where a person who has been covered by the legislation in a number of contracting parties is entitled to a pension according to the

¹⁸² Article 31(1) and (2) of the Convention

¹⁸³ Article 32 of the Convention

¹⁸⁴ Article 33(1)(a) of the Convention

¹⁸⁵ Article 33(1)(b) of the Convention

¹⁸⁶ Article 33(2) of the Convention

national law in one of those states alone, without any recourse to the Convention and therefore the principle of aggregation. In such a case that contracting party must also calculate the pension it should pay under national law. If the contracting party would have to pay more under its national law than the total amount payable under the Convention by *all* the contracting parties concerned then that party must pay the person a supplement equal to the difference between the total pension s/he receives from all the contracting parties and the pension s/he would have received under national law¹⁸⁷. For example, States A, B and C are all contracting parties to the Convention. According to the Convention State A has to pay a monthly pension of 700 EUR, State B a pension of 300 EUR and State C of 350 EUR, a total of 1350 EUR per month. According to the national law in State A the person would have been entitled to a pension of 1500 EUR per month. In this case State A must pay a supplement of 1500 – 1350 = 150 EUR per month.

If more than one of the contracting parties would have to pay the person a supplement then only the highest supplement is paid. However, the cost of this supplement is then shared proportionally between those states concerned, having regard to the amount of the supplement which each would have had to pay¹⁸⁸.

Aggravation of invalidity: if a person is claiming an invalidity pension and then suffers a further reduction in his or her working capacity due to accident or illness then the pension must be adjusted to reflect this. If the recipient of the invalidity pension from State A suffers an aggravation of his/her injury but has not been insured in any other contracting party since s/he was awarded a pension by State A, then State A must pay a higher pension to reflect the aggravation. If the same person has been insured for invalidity in States B and C since receiving the invalidity benefit in State A then the whole pension will be recalculated according to the three-stage process described above¹⁸⁹.

Conversion of invalidity benefits into old age benefits: many states convert invalidity pensions into old age pensions when the recipient reaches pensionable age. In other words when the invalid reaches a certain age the risk from which s/he suffers is no longer considered to be incapacity for work due to illness or injury but old age. Contracting parties that convert invalidity pensions in this way according to their national law must convert any pension they pay according to the Convention in the same way¹⁹⁰.

5.6.3 Occupational Injuries and Diseases

The table below shows that nearly all provisions of the Convention relating to occupational injuries and diseases take immediate effect and only some special provisions do not:

IMMEDIATELY EFFECTIVE		<u>NOT IMMEDIATELY EFFECTIVE</u>	
Art. 8	Equal treatment for nationals of all contracting parties		
Art. 11	The export of benefits		
Art. 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity.		

¹⁸⁷ Article 34(1) of the Convention

¹⁸⁸ Article 34(2) of the Convention

¹⁸⁹ Article 35 of the Convention

¹⁹⁰ Article 37 of the Convention

IMMEDIATELY EFFECTIVE		NOT IMMEDIATELY EFFECTIVE	
Art. 38	Provision of benefits to workers residing in the territory of a contracting party other than the competent state		
Art. 39	Accidents on the way to and from work		
Art. 40	Provision of benefits to workers who temporarily reside, transfer their residence to, return to, or go for treatment in the territory of a contracting party other than the competent state		
Art. 41	Prosthetic appliances, major aids and other major benefits in-kind		
		Art. 42	Cost of transporting the victim to the territory of the contracting party in which he resides, or the place of burial
Art. 43	Special provisions in certain legislations		
Art. 44	Other special provisions		
Art. 45	Calculation of cash benefits		
Art. 46 (1),(2) and (5)	Compensation of persons contracting an occupational disease after exposure to risk in the territory of several contracting parties		
		Art. 46 (3) and (4)	Special cases concerning occupational diseases
Art. 47	Aggravation of an occupational disease		
Art. 48	Refund of the cost of benefits between contracting parties		

Equal treatment for nationals of all contracting parties: the principle of equal treatment of the nationals of other contracting parties with the nationals of the competent state applies unconditionally to both contributory and non-contributory benefits¹⁹¹.

The export of benefits: the Convention affirms the principle of the exportation of long-term benefits (pensions) paid in respect of occupational injuries and diseases. That means that they shall not be suspended, reduced or terminated if the recipient moves his/her residence to or resides in another contracting party.

The payment of other (short term) cash benefits in case of occupational injuries and diseases are provided together with the provision of benefits in-kind in these cases (see below).

Rules preventing the overlapping of benefits with other benefits, other income or occupational activity: the Convention's rules on the overlapping of benefits with respect to

¹⁹¹ Article 8 of the Convention. The exceptions provided in this Article for special non-contributory benefits (see under 5.6.2) also apply in principle here, but such benefits are not usually provided under national law in respect of occupational injuries and diseases.

occupational injuries and diseases are the same as those applied to sickness and maternity benefits (see section 5.6.1 above)¹⁹².

Provision of benefits to workers residing in the territory of a contracting party other than the competent state: short-term benefits for occupational injuries and diseases must be provided even if the recipient is residing in a contracting party other than the competent state¹⁹³. It does not matter whether the person was resident in another contracting party when s/he suffered their injury/disease or whether a person becomes entitled to a benefit in one contracting party and then later decides to move to another¹⁹⁴. The way that benefits are granted for those residing in contracting parties other than the competent state depends upon whether the benefits are cash benefits or benefits in-kind.

Benefits in-kind are provided in the state of residence according to the rules in the state of residence, the state of residence is then compensated by the competent state. This means that the recipient is entitled to the same benefits in-kind as if he were insured in the state of residence. For example if the recipient of benefits for occupational disease moves from the competent state (State A) to another contracting party (State B), s/he will be entitled to the full range of medical treatment available to victims of that occupational disease in State B¹⁹⁵. This is relevant where certain medical treatments are available under the system in State B but not in State A. Variation of available medical treatment from one state to another might relate to such things as the range of pharmaceuticals used (a new drug may be available in one state but not another), the provision of alternative remedies such as acupuncture or the full coverage of services like physiotherapy.

Short-term cash benefits for occupational injuries and diseases are paid by the competent state according to the legislation in the competent state. However the state of residence may agree to pay the recipient through its social security infrastructure (e.g. its local social security offices) provided that the competent state provides full reimbursement¹⁹⁶.

Accidents on the way to and from work: any accident that happens on the way to or from work in the territory of a contracting party other than the competent state will be treated as if it occurred in the territory of the competent state¹⁹⁷. This may happen where someone has to cross a border in order to get to work or where they are on business in another country. This does *not* oblige the contracting parties to compensate someone who is involved in such an accident. It only applies to those states that already classify accidents on the way to or from work as occupational accidents. It effectively prevents these contracting parties restricting compensation to accidents that occur within their geographical boundaries.

Provision of benefits to workers who temporarily reside, transfer their residence to, return to, or go for treatment in the territory of a contracting party other than the competent state: the Convention refers to three distinct groups of people¹⁹⁸:

- i) those who are temporarily resident in a contracting party other than the competent state,

¹⁹² Article 13 of the Convention and Article 8 of the Supplementary Agreement

¹⁹³ Article 38(1) of the Convention

¹⁹⁴ Article 38(4) of the Convention

¹⁹⁵ Article 38(1)(a) of the Convention

¹⁹⁶ Article 38(1)(b) of the Convention

¹⁹⁷ Article 39 of the Convention

¹⁹⁸ Article 40(1) of the Convention

- ii) those who are authorised by the competent state to either return to another contracting party (return home) or transfer their residence to another contracting party (even if they have never been to that contracting party before). This need not be a temporary transfer, it could be a permanent one as well. The authorisation is given by the relevant bodies within the competent state. It can *only* be refused on the basis that the person concerned is too ill to travel or such travel would interfere with their medical treatment¹⁹⁹.
- iii) Those who are authorised by the competent state to go temporarily to another contracting party in order to obtain medical treatment. This authorisation *cannot* be refused if the treatment in question cannot be given in the territory of the contracting party²⁰⁰.

All three groups of people shall be entitled to benefits in-kind provided according to the rules in the state of residence but reimbursed to the state of residence by the competent state. However, the competent state is entitled to restrict the duration for which benefits in-kind will be provided. All three groups will also be entitled to cash benefits paid according to the rules in the competent state and financed by that state.

Prosthetic appliances, major aids and other major benefits in-kind: as explained above benefits in-kind may be provided to those who reside in a contracting party other than the competent state and those benefits are financed by the competent state but they are provided in accordance with the rules of the state of residence. This effectively reduces the amount of control the competent state has over the cost of benefits. To allow the competent state a greater degree of control contracting parties are permitted to enter into agreements whereby the provision of expensive benefits in-kind are made subject to authorisation by the competent state before they are supplied in the state of residence²⁰¹.

Special provisions in certain legislations: some national systems do not have special schemes for occupational accidents or diseases, instead the affects of these injuries or illnesses are treated under the provisions for health care, sickness cash benefits and invalidity in the same way as non-work related incapacity. This could cause problems for those residing in a contracting party other than the competent state. In this situation benefits in-kind are provided according to the scheme for occupational injuries/diseases of the state of residence, if that state has no specific scheme for occupational injuries/diseases then the entitled person should receive benefits in-kind according to the normal sickness scheme in the state of residence²⁰².

If, when calculating a benefit for occupational injuries or diseases, a contracting party takes into account previous occupational injuries or diseases suffered whilst the insured person was covered under its legislation, then it must also take into consideration occupational injuries and diseases suffered in other contracting parties²⁰³.

Other special provisions: where a contracting party sets a maximum duration for the payment of benefits it may take into account any periods during which benefits have been paid to the person concerned by other contracting parties for the same injury or disease²⁰⁴.

¹⁹⁹ Article 40(2)(a) of the Convention

²⁰⁰ Article 40(2)(b) of the Convention

²⁰¹ Article 41 of the Convention

²⁰² Article 43(1) of the Convention

²⁰³ Article 43(4) of the Convention

²⁰⁴ Article 44(2) of the Convention

Calculation of cash benefits: where benefits are based on average earnings, fixed earnings or the number of people in the claimant's family, they are treated in the same way as old age, invalidity and survivor's pensions (see 5.6.2 'Further Provisions on the Calculation of Benefits' above)²⁰⁵.

Compensation of persons contracting an occupational disease after exposure to risk in the territory of several contracting parties: occupational diseases are often caused by long-term exposure to harmful substances such as asbestos or the long-term pursuit of certain occupations such as mining. Where a person has been exposed to a hazardous substance or pursued a dangerous occupation in more than one contracting party, the Convention provides that benefits shall be awarded only by the last contracting party whose conditions for entitlement for the occupational disease are fulfilled²⁰⁶. This can be shown with the following example: A person was employed in the mining industry at first in State A, then in State B and at last in State C. All three states have ratified the Convention. If the person contracts an occupational disease only State C would be responsible for the provision of all benefits for this disease, if the conditions for entitlement are fulfilled. If the conditions in State C are not fulfilled, then State B would have to examine if its conditions for entitlement are fulfilled and possibly at last State A. If a state makes the payment of benefit conditional on the fact that the claimant is first diagnosed with the disease whilst that person is within its territory then the Convention states that if the disease is first diagnosed in any other contracting party then this state shall consider this diagnosis to have occurred on its territory²⁰⁷.

The further provisions of the Convention for such cases concerning the diagnosis of the disease within a specified period after the termination of the last occupation liable to have caused the disease²⁰⁸ and the occupation liable to cause the disease having been followed for a specific period²⁰⁹ are not immediately effective. For their application additional bilateral or multilateral agreements are necessary. In the aforementioned case these provisions would only be taken into account if such agreements exist between States A, B and C.

Aggravation of an occupational disease: when someone suffers from the aggravation of occupational disease in one contracting party (State A) whilst already receiving benefits for the same disease from another contracting party (State B), the first question to ask is whether the person concerned followed an occupation in State A that was liable to cause or aggravate the disease. If the answer is no, then State A party does not have to pay anything and State B must increase the recipient's benefit in order to reflect the aggravation. If the answer to the question is yes, then State B continues to pay the original benefit whilst State A pays the person a supplement. This supplement is calculated by first determining what benefits would have been paid before the aggravation according to the law of State A and then calculating the amount of benefit that would have been paid after the aggravation according to the law of State A. The supplement to be paid by State A then equals the difference between these two amounts²¹⁰.

²⁰⁵ Article 45 of the Convention

²⁰⁶ Article 46 of the Convention

²⁰⁷ Article 46(2) of the Convention

²⁰⁸ Article 46(3) of the Convention

²⁰⁹ Article 46(4) of the Convention

²¹⁰ Article 47 of the Convention

Refund of the cost of benefits in-kind between contracting parties: where a person receives benefit in-kind whilst residing permanently or temporarily in a contracting party other than the competent state then the competent state is obliged to cover the costs. However, contracting parties may agree between themselves that they shall waive these costs. This situation is common in contracting parties that share borders or experience a great deal of migration between each other. In situations such as these the money received by one state may be much the same as that paid out and it reduces administrative costs simply to waive the debt rather than go through the procedure of invoicing the other contracting party and having the funds transferred²¹¹.

5.6.4 Death Grants

Death grants are one-off lump sum payments paid for the loss of a breadwinner. They do not include one off lump sums that are paid instead of a periodic survivors' pension, these lump sums are dealt with in the same way as survivors' pensions (see section 5.6.2 above)²¹². The table below shows that all provisions of the Convention relating to death grants take immediate effect:

IMMEDIATELY EFFECTIVE		<u>NOT</u> IMMEDIATELY EFFECTIVE	
Art. 8	Equal treatment for nationals of all contracting parties		
Art. 11	Export of benefits		
Art 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity		
Art. 49	Adding together of periods		
Art. 50	Special provisions		

Equal treatment for nationals of all contracting parties: the principle of equal treatment of the nationals of other contracting parties with the nationals of the competent state applies unconditionally to both contributory and non-contributory death grants²¹³.

Export of benefits: the Convention affirms the principle of exportation of death grants. That means that they shall not be suspended, reduced or terminated if the recipient moves his/her residence to or resides in another contracting party²¹⁴.

Rules preventing the overlapping of benefits with other benefits, other income or occupational activity: the Convention does not permit people to claim more than one death grant in respect of the same person or in relation to the same period of compulsory insurance completed by that person²¹⁵. Furthermore the competent state may reduce or refuse a death

²¹¹ Article 48 of the Convention

²¹² Article 1(v) and 1(x) of the Convention

²¹³ Article 8 of the Convention

²¹⁴ Article 11 of the Convention. The exceptions provided in this Article for special non-contributory benefits (see under 5.6.2) apply in principle also here, but such benefits are not usually provided in national laws as death grants.

²¹⁵ Article 11(1) of the Convention and Article 10 of the Supplementary Agreement

grant where it overlaps with benefits or income received or occupational activity undertaken in other contracting parties²¹⁶.

Adding together of periods: contracting parties are obliged to add together periods of insurance and residence in much the same way as for sickness and maternity benefits (see section 5.6.1 above)²¹⁷.

Special provisions: the Convention states that where someone dies in the territory of a contracting party other than the competent state the competent state should treat that death as occurring within its territory²¹⁸. In addition to the principle of export of benefits (see above) the Convention provides that death grants must be paid even if the recipient resides in a contracting party other than the competent state²¹⁹. This provision is particularly important for death grants given that migrant workers are more likely to leave survivors in other contracting parties than nationals of the competent state. The Convention also expressly provides that the rules on death grants shall also apply to deaths resulting from occupational injury or disease²²⁰.

5.6.5 Unemployment

The table below shows which provisions of the Convention relating to unemployment take immediate effect and which do not:

IMMEDIATELY EFFECTIVE		NOT IMMEDIATELY EFFECTIVE	
Art. 8	Equal treatment for nationals of all contracting parties		
Art. 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity		
Art. 51	Adding together of periods		
		Art. 52	Maintenance of entitlement to benefit on change of residence
		Art. 53	Unemployed persons who were not residing in the territory of the competent state during their last period of employment
		Art. 54	Special provisions in the legislation of certain states concerning the maximum duration for the payment of benefits
Art. 55	Calculation of benefits		
Art. 56	The need for bilateral or multilateral agreements in order to apply the non-immediately effective provisions		

²¹⁶ Article 11(2) of the Convention

²¹⁷ Article 49 of the Convention

²¹⁸ Article 50(1) of the Convention

²¹⁹ Article 50(2) of the Convention

²²⁰ Article 50(3) of the Convention

Equal treatment for nationals of all contracting parties: the principle of equality applies without condition to contributory benefits for unemployment. As for non-contributory benefits, the amount of which does not depend on the length of periods of residence, equal treatment in relation to these benefits *may* be made conditional on minimum periods of residence. The Convention states that the maximum period of residence that may be imposed is six months²²¹. If the national of another contracting party fails to satisfy the residence condition then the competent state is free to refuse, suspend or reduce a benefit simply because that person is not a national of the competent state.

Rules preventing the overlapping of benefits with other benefits, other income or occupational activity: the same rules on overlapping are applied to unemployment benefits as for sickness and maternity benefits (see above section 5.6.1)²²².

Adding together of periods: the Convention distinguishes between those contracting parties that base entitlement to unemployment benefits on periods of insurance and those that base such entitlement on periods of employment, occupational activity or residence. Where the competent state bases entitlement upon periods of insurance that contracting party must take into account periods of insurance, employment or occupational activity completed in other contracting parties but periods of employment and occupational activity only if those periods count as periods of insurance under its legislation²²³. In respect of those competent states where entitlement is based on employment, occupational activity or residence these states must take into account all periods of insurance, employment and occupational activity completed in other contracting parties regardless of whether those periods would count as periods of employment, occupational activity or residence under its legislation²²⁴.

Some contracting parties provide specific unemployment schemes for those in particular occupations, such as mining or teaching. In these cases the competent state need only add together periods spent in similar special schemes in other contracting parties or, if the other contracting parties do not operate such special schemes, only the time the applicant spent working in that specific occupation in those contracting parties. If all the time a person has spent working in that particular occupation is added together and it is still insufficient to obtain a benefit under the special scheme then the person concerned should be treated under the general scheme²²⁵.

The principle of aggregation is, with the exception of two cases which are not immediately effective, only applicable where the person concerned claims unemployment benefit in the contracting party in which they were last covered for the risk of unemployment²²⁶.

Calculation of benefits: for those unemployment benefits that are earnings-related the competent state need only consider the claimant's earnings received within its territory. However, if the person had been employed for less than 4 weeks in the competent state then the earnings used as a basis are the normal wage the claimant would have received in the competent state for his last occupation in another contracting party²²⁷.

²²¹ Article 8 of the Convention

²²² Article 13 of the Convention

²²³ Article 51(1) of the Convention

²²⁴ Article 51(2) of the Convention

²²⁵ Article 51(3) of the Convention

²²⁶ Article 51(4) of the Convention

²²⁷ Article 55(1) of the Convention

Where the law in the competent state provides that the amount of unemployment benefit is affected by the number of family members supported by the claimant, then account shall be taken of dependent family members resident in other contracting parties²²⁸. Where the amount of the benefit is affected by the duration for which a person has been insured, employed, engaged in occupational activity or resident then the competent state must apply the principle of aggregation and consider such periods completed in other contracting parties²²⁹.

The need for bilateral or multilateral agreements in order to apply those provisions which are not immediately effective: the Convention describes the provisions on unemployment benefits that are not immediately effective and makes the application of these provisions subject to bilateral or multilateral agreements to be made between the contracting parties. The provisions that are not immediately effective deal with issues such as the maintenance of entitlement to benefit on change of residence, the provision of benefits for unemployed persons who were not residing in the territory of the competent state during their last period of employment and special provisions in the legislation of certain states concerning the maximum duration for the payment of benefits²³⁰. The Convention also provides some guidance on what matters should be covered within these agreements. These matters include the categories of persons who shall be covered by the agreements and rules on the overlapping of benefits²³¹.

5.6.6 Family benefits

The table below shows which provisions of the Convention relating to family benefits take immediate effect and which do not:

IMMEDIATELY EFFECTIVE		NOT IMMEDIATELY EFFECTIVE	
Art. 8	Equal treatment for nationals of all contracting parties		
Art. 13	Rules preventing the overlapping of benefits with other benefits, other income or occupational activity		
Art. 57	Adding together of periods		
Art. 58	The need for bilateral or multilateral agreements in order to apply the non immediately effective provisions		
		Art. 59	Provision of family allowances for children residing or being brought up in the territory of a contracting party other than the competent state
		Art. 60	Provision of family allowances for children of an unemployed worker who reside or are brought up in the territory of a contracting party other than the competent state

²²⁸ Article 55(2) of the Convention

²²⁹ Article 55(3) of the Convention

²³⁰ Article 56(1) of the Convention

²³¹ Article 56(2) and (3) of the Convention

IMMEDIATELY EFFECTIVE		NOT IMMEDIATELY EFFECTIVE	
		Art. 61	Provision of family benefits to members of an unemployed person's family who reside in the territory of a contracting party other than the competent state
		Art. 62	Provision of family benefits to members of the family of an unemployed worker who reside in the territory of a contracting party other than the competent state
		Art. 63	Arrangements for the refund of the cost of benefits

The Convention distinguishes between “*family benefits*” and “*family allowances*”. Family allowances refer to periodic cash benefits that are paid according to the number and/or age of the children. Family benefits include in addition to family allowances all other cash benefits or benefits in-kind which are intended to assist with the costs of maintaining a family²³².

Special birth grants can be excluded by the contracting parties by listing such in Annex II, this exception applies because of their particular demographic character. Also excluded are the additional allowances for children paid in addition to pensions which are covered by the definition of “pension”²³³ and therefore dealt with the chapter concerning pensions (see 5.6.2 above).

Equal treatment for nationals of all contracting parties: the principle that nationals of all contracting parties are treated equally applies without condition to all family allowances and family benefits whether contributory or non-contributory²³⁴.

Adding together of periods: the Convention states that where a benefit is made conditional on the completion of periods of employment, occupational activity or residence any of these periods completed in other contracting parties must be taken into account²³⁵.

The need for bilateral or multilateral agreements in order to apply those provisions which are not immediately effective: The vast majority of the Convention's provisions relating to family allowances and family benefits are not immediately effective but rely upon the conclusion of bilateral or multilateral agreements between the contracting parties²³⁶. These provisions are separated into two sections relating respectively to family allowances and family benefits²³⁷. This is because the legislations of the contracting parties are based on different principles in this field. Therefore there is an essential difference between the two sections. The first is based on the application of the legislation of the state in which the person entitled to family allowance is employed, while the second, covering all family benefits, is based on the application of the legislation of the state in whose territory the other members of the family reside. The contracting parties are free to decide in their bilateral or multilateral agreements whether they will apply the provisions of the first section or those of the second section. The Convention specifies some matters which should appear within any

²³² Article 1(w) of the Convention

²³³ Article 1(v) of the Convention

²³⁴ Article 8 of the Convention

²³⁵ Article 57 of the Convention

²³⁶ Article 59(1) of the Convention

²³⁷ Article 59 and 60 respectively Art 61 to 63 of the Convention

bilateral or multilateral agreements concluded by the contracting parties. These matters include the categories of persons who shall be covered by the agreements and rules on the overlapping of benefits²³⁸.

5.7 Implementation, Administration and Annexes

The Convention is supported by a Supplementary Agreement. The Supplementary Agreement provides detailed guidance on the administration of the Convention; it also prescribes a number of standard forms to be used in the passing of information from one contracting party to another. No state can ratify the Convention without also ratifying the Supplementary Agreement²³⁹.

Some major provisions on administrative measures can be found within the Convention itself. Firstly, the Convention itself demands that all contracting parties co-operate, assisting each other as if they were applying their own legislation²⁴⁰. In other words anything one contracting party is required to do for another (such as the provision of benefits in-kind in relation to occupational injuries and diseases by the state of residence on behalf of the competent state) will be done with the same diligence as would be expected of the completion of those same tasks under the national system. The social security authorities are not allowed to force people to make applications only in the official language of the competent state, applications made in the official language of any other contracting party must be duly processed²⁴¹. If claimants are resident in the territory of a contracting party other than the competent state they may make their claim to the social security institutions in their state of residence and those institutions will be under a duty to pass those claims onto the competent state²⁴².

Any particular measures necessary for the application of the national laws of certain contracting parties can be included in Annex VII to the Convention²⁴³. Such measures must be notified for new contracting parties on the date of signature or at latest at the date of ratification and need the approval of all contracting parties and signatory states. This also applies to each subsequent amendment of this and the other Annexes to the Convention which shall be notified within three months from the date of publication of a new law making an amendment necessary²⁴⁴.

The other Annexes to the Convention, which are also an integral part of the Convention²⁴⁵, consist of the definitions of the territories and nationals of the contracting parties (Annex I), the legislation and schemes covered by the Convention (Annex II), the provisions of bilateral and multilateral agreements kept in force (Annex III) and those extended to all nationals of the contracting parties (Annex V) as well as the special benefits to which the special provisions concerning equality of treatment apply (Annex IV) or which are excluded from export (Annex VI).

²³⁸ Article 58(2) of the Convention

²³⁹ Article 80(3) and (4) of the Convention

²⁴⁰ Article 64(2) of the Convention

²⁴¹ Article 64(4) of the Convention

²⁴² Article 66(1) of the Convention

²⁴³ Article 72 of the Convention

²⁴⁴ Article 73(2) of the Convention

²⁴⁵ Article 73(1) of the Convention

The seven Annexes to the Supplementary Agreement primarily name the competent authorities (Annex I), institutions (Annexes II, III and VII), liaison offices (Annex IV) and banks (Annex VI) of the contracting parties which are responsible for the administration of the Convention²⁴⁶. Annex V lists the bilateral and multilateral administrative arrangements kept in force between contracting parties.

5.8 Ratification and Entry into Force

The Convention came into force three months after the third ratification on 1st March 1977. For those member states of the Council of Europe wishing to ratify the Convention now, its provisions will take effect from the third month after the deposit of an instrument of ratification²⁴⁷. The Committee of Ministers of the Council of Europe may invite non-member states to accede to the Convention provided that it receives the unanimous approval of all the contracting parties²⁴⁸.

For those states that have already ratified the Interim Agreements once they ratify the Convention the Interim Agreements shall cease to have effect between themselves and other contracting parties to the Convention. However, the Interim Agreements will still have effect with regards to those states that have ratified the Interim Agreements but not the Convention²⁴⁹.

When the Convention enters into force for a contracting party all periods of insurance or residence completed under the legislation of the new contracting party shall be taken into consideration for the purposes of aggregation. This is the case even if those periods were completed *before* the Convention entered into force²⁵⁰.

5.9 Denunciation

Any contracting party is entitled to denounce the Convention once the Convention has been in force for that party for at least five years²⁵¹. However, even though a contracting party has denounced the Convention that party is still obliged to maintain all the rights that have been acquired under the Convention²⁵². This means that any benefits claimed under its provisions must continue to be paid. Rights that are in the process of acquisition must also be maintained either by the conclusion of agreements between the contracting parties and the state denouncing the Convention or by national laws²⁵³.

²⁴⁶ Article 4 of the Supplementary Agreement

²⁴⁷ Article 75 of the Convention

²⁴⁸ Article 77 of the Convention

²⁴⁹ Article 76 of the Convention

²⁵⁰ Article 74(2) of the Convention

²⁵¹ Article 78(2) of the Convention

²⁵² Article 79(1) of the Convention

²⁵³ Article 79(2) of the Convention

5.10 Dispute Resolution

The Convention does not have a supervisory mechanism. There is no court overseeing its correct implementation and no system of regular national reports submitted to the Council of Europe. The Convention urges its contracting parties to resolve their difficulties by negotiation²⁵⁴. Should two or more contracting parties have a disagreement they should consider whether their dispute is a matter of interpretation that would affect all the other contracting parties or not. If one or more of the parties to the dispute feels that it may affect all the contracting parties then an application can be made to the Committee of Ministers of the Council of Europe for an opinion²⁵⁵.

If the dispute does not impact upon other contracting parties or the opinion provided by the Committee of Ministers does not help in the resolution of the dispute then the disputing parties can bring the question before an arbitrator²⁵⁶. If the parties do not agree otherwise, the arbitrator will be designated by the President of the European Court of Human Rights²⁵⁷ whose decision shall be final²⁵⁸.

5.11 The Protocol

The Protocol was intended to extend the personal scope of the Convention. The Protocol therefore provides that the Convention should be applicable not only to the nationals of the contracting parties but also to third state nationals²⁵⁹. At the time of signature or at the date of ratification of the Protocol each contracting party can declare that it does not apply this extension to the provisions of the Convention on equal treatment and/or on the export of pensions²⁶⁰. That means that these provisions of the Convention²⁶¹ would not be applicable to third state nationals. It should be mentioned that the Protocol is not yet in force and will come into force on the first day of the third month after its second ratification²⁶².

5.12 The Explanatory Report and the Guide to the Application of the Convention

The **Explanatory Report** was prepared, as with the Convention, by the Committee of Experts on Social Security²⁶³ and adopted by the Committee of Ministers. Although it does not constitute an authoritative interpretation of the text of the Convention it can help for the understanding of the provisions of the Convention and facilitate the application of the Convention. The Explanatory Report provides first a general over-view of the Convention before commenting on the provisions of the Convention and the Supplementary Agreement one by one.

²⁵⁴ Article 71(1) of the Convention

²⁵⁵ Article 71(2) of the Convention

²⁵⁶ Article 71(3) of the Convention

²⁵⁷ Article 71(4) of the Convention

²⁵⁸ Article 71(7) of the Convention

²⁵⁹ Article 2 of the Protocol

²⁶⁰ Article 3 of the Protocol

²⁶¹ Article 8 and 11 of the Convention

²⁶² Article 6(1) of the Protocol

²⁶³ Article 1(c) of the Supplementary Agreement

The Committee of Experts has also drawn up, according to the mandate of the Supplementary Agreement²⁶⁴, a **Guide** to the application of the Convention and the Supplementary Agreement. This was adopted on 26th February 1976. This Guide is not itself binding, but is intended to facilitate the tasks of officials in institutions and other social security administrations in applying the Convention and the Supplementary Agreement by systematically describing the methods of co-ordination of these two instruments and by providing instructions on the use of the forms adopted for the application of the immediately effective provisions of the Convention. There are 29 forms labelled CE 1 to CE 29, these are only models and contracting parties are free to use different forms.

²⁶⁴ Article 2(1) of the Supplementary Agreement

CHAPTER SIX

THE MODEL PROVISIONS FOR A BILATERAL SOCIAL SECURITY AGREEMENT

INTRODUCTION

In 1994 the European Social Security Committee of the Council of Europe instructed the Committee of Experts responsible for social security to prepare a model bilateral agreement that could form the basis of agreements signed between the Council of Europe's member states. The aim was to create links between different social security systems in order to protect the rights of migrants. The result of this request was a flexible instrument that covers all four of the basic principles of international social security co-ordination: equal treatment, determination of the applicable legislation, maintenance of acquired rights and the export of benefits. The model provisions are divided into five parts. The first part is referred to as general provisions; it covers the material scope and personal scope of the model provisions as well as providing for the principles of equal treatment and the export of benefits. It also deals with national rules that are concerned with the overlapping of a benefit with other benefits or income/occupational activity. The second part of the model provisions is dedicated to the principle of determining the applicable legislation. The third part addresses each of the branches of social security covered by the model provisions. The fourth part, entitled "miscellaneous provisions" deals with practical, administrative arrangements and dispute resolution. Finally, the fifth part deals with transitional and final provisions, covering when and how the bilateral agreement will enter into force as well as ratification and denunciation. This Chapter is also divided into five parts, each dealing with the respective part of the model provisions.

The model provisions are not compulsory they merely act as a guide to states that wish to conclude bilateral agreements. The states are not obliged to adopt all the provisions and are free to alter the content of any provision. States are also free to determine the range of benefits that are covered by their bilateral agreements. The model provisions respect the differences in approach to and organisation of social security in different countries and so provide alternative suggestions for co-ordination wherever possible. The model provisions are supported by an explanatory report that was prepared by the Committee of Experts and recognised by the Committee of Ministers of the Council of Europe as an official document.

6.1 Part One: General Provisions

6.1.1 Definitions

The model provisions begin by setting down a number of definitions for terms such as "legislation", "benefit" and "residence"²⁶⁵. Any terms that are not defined are explicitly left to national legislation²⁶⁶.

²⁶⁵ Article 1(1) of the model provisions

6.1.2 Material Scope

When concluding a bilateral agreement the contracting parties must first agree the contingencies to which the agreement shall be applicable. The model provisions are therefore extremely flexible and provide two alternatives as to how this can be done: either by listing the relevant legislation (Alternative 1) or the different benefits (Alternative 2)²⁶⁷. Although most bilateral instruments cover most or all branches of social security, some states may restrict the application of their agreements to long term benefits (invalidity, old age and survivor's benefits). The model provisions make it clear that all future amendments of the national legislation listed in the material scope are automatically covered by the agreement²⁶⁸.

Finally, depending on the circumstances, the bilateral agreements can apply to both contributory and to non-contributory schemes (i.e. schemes providing benefits, the granting of which does not depend on a direct contribution either by the persons protected or by their employers) or only to contributory schemes²⁶⁹.

6.1.3 Personal Scope

As with the material scope the model provisions provide two alternatives for the personal scope of an agreement²⁷⁰. The first alternative provides for a general personal scope and covers all persons who have been subject to the social security legislation in one or both of the contracting parties (regardless of their nationality). The second alternative provides for a limited personal scope and covers only nationals of the contracting parties as well as refugees and stateless persons. Both alternatives include the family members and the survivors of the persons covered, in the second alternative regardless of the nationality of the family members or survivors.

6.1.4 Equal Treatment

The model provisions ensure that the nationals of one contracting party as well as stateless persons and refugees and the family members and survivors (regardless of their nationality) shall be treated in the same way as nationals of the other contracting party²⁷¹. This means that they receive the same benefits and are subject to the same conditions of entitlement. The model provisions make the equal treatment dependent on the residence in one of the contracting parties.

The principle of equal treatment is not extended to participation in social security administration or membership of social security tribunals. Some countries organise their social security system so that representatives of insured persons or employers are directly involved in the decision making process. The model provisions allow such countries to expressly prohibit foreign nationals from voting or standing for election as representatives. The model provisions also allow the exclusion of foreign nationals from sitting on

²⁶⁶ Article 1(2) of the model provisions

²⁶⁷ Article 2(1) of the model provisions

²⁶⁸ Article 2(2) of the model provisions

²⁶⁹ See also section 1.7 of this short guide

²⁷⁰ Article 3 of the model provisions

²⁷¹ Article 4 of the model provisions

adjudication tribunals that resolve social security disputes relating e.g. to benefit entitlement, benefit amount or the suspension of benefits²⁷².

6.1.5 Export of Benefits

The model provisions make the export of benefits a general rule. They clearly state that no benefit shall be restricted solely on the basis that the recipient resides in the territory of the other contracting party²⁷³. In other words the benefit cannot be suspended, terminated, reduced or subjected to extra conditions of entitlement purely because the person to whom it is paid resides in the other contracting party. There are two important exceptions to this blanket rule²⁷⁴. The first is unemployment benefits, this is because states typically make the payment of this benefit subject to its recipient promising to seek work. This promise can be monitored by obliging the recipient to sign on at a local labour exchange. This supervision would be more complicated if the unemployed person were allowed to reside in another country. The second exclusion from export is special benefits granted as assistance or in case of need. These benefits are closely linked to the surroundings and the costs of living in each country. They are also typically non-contributory benefits, this means that the claimant need not have made any direct contribution to their financing. This is distinct to contributory benefits where the claimant will have made some financial contribution and therefore 'earned' his/her right to the benefit.

6.1.6 The Prevention of the Overlapping of Benefits

Every national social security system will have some rules or regulations to prevent social benefits being combined with other benefits or with income or occupational activity. One of principal goals of these rules is to prevent double recovery, in other words preventing someone from being compensated twice for the same social risk. Overlapping rules vary from one country to another and are often used to promote certain social policies. For example, allowing substantial overlapping of income from employment with an old age pension will encourage people to remain economically active after retirement age. This may result in employed pensioners continuing to earn, spend and pay social security contributions on their earnings thereby promoting the financial well being of the economy. The model provisions do not interfere with a country's right to establish rules on overlapping but they do allow one contracting party to take into consideration benefits paid, income received and economic activity performed in the other contracting party²⁷⁵. Each contracting party may then treat this payment of benefit, reception of income or pursuit of economic activity as if it takes place within its own borders and apply its own rules on overlapping accordingly.

There is one exception to the application of overlapping rules to benefits received in the other contracting party. This relates to pensions for old age, invalidity and survivors. International social security law often requires long-term benefits to be paid by more than one country, this is fair because each country pays a pension that reflects the period during which the recipient was covered by its social security provisions. The model provisions

²⁷² Article 4(2) of the model provisions

²⁷³ Article 5(1) of the model provisions

²⁷⁴ Article 5(2) of the model provisions

²⁷⁵ Article 6(1) of the model provisions

explain how long-term benefits are apportioned between the contracting parties and this will be dealt with below in section 6.3.2. Pensions paid in accordance with these provisions of the model provisions are excluded from the application of national overlapping rules²⁷⁶.

6.2 Part Two: Determining the Applicable Legislation

The model provisions state that in relation to one and the same employment or occupation only one legislation should be applicable at any time. The contracting party whose legislation is applicable is known as the competent state and the administrative institution in that competent state that is responsible for the organisation of the relevant scheme is known as the “*competent institution*”²⁷⁷. The model provisions lay down three basic rules for the determination of the applicable legislation. These basic rules are based on the principle of *lex loci laboris*²⁷⁸:

- i) **employees** are covered by the legislation of the contracting party in which they work, even if they reside in the other contracting party,
- ii) **self-employed persons** are covered by the legislation of the contracting party in which they perform their economic activity, and
- iii) **civil servants** are covered by the legislation of the contracting party within whose administration they are employed.

These are only the basic rules, the model provisions provide for a number of exceptions and special cases. One such special case is **posting**, whereby employers are entitled to send an employee to work in the other contracting party for a limited period during which that employee will continue to be covered by the legislation of the contracting party s/he has left behind. For example an employer may want its employee to perform a particular task in the other contracting party or to work in an office in the other contracting party. A worker may be posted for up to 12 months if, at the time of posting s/he is not expected to be working in the other contracting party for more than this amount of time. The whole idea of posting is that it is an exceptional thing and not a regular practice by an employer (perhaps to avoid more expensive social security contributions in the other contracting party). The model provisions provide an alternative where a person may be posted for up to 24 months. They also make posting available to self-employed persons who may perform activities in the other contracting party for up to either 12 or 24 months whilst remaining insured by the contracting party from which they came²⁷⁹. The model provisions also apply special rules for those engaged in international transport²⁸⁰, aboard ships²⁸¹ and in diplomatic missions.²⁸²

The rules on determining the applicable legislation that are laid down by the model provisions are quite simple but will deal effectively with the majority of situations. Nonetheless more detailed rules will be required to deal with situations where someone is employed or self-employed in both contracting parties at the same time. The parties will have to come to some agreement as to what will happen in these situations. They may find

²⁷⁶ Article 6(2) of the model provisions

²⁷⁷ Article 1(g) of the model provisions

²⁷⁸ Article 7 of the model provisions

²⁷⁹ Article 8 of the model provisions

²⁸⁰ Article 9 of the model provisions

²⁸¹ Article 10 of the model provisions

²⁸² Article 11 of the model provisions

some guidance from the more detailed rules contained in the Council of Europe's Convention on Social Security.

6.3 Part Three: Special Provisions Concerning the Various Categories of Benefits

6.3.1 Sickness and Maternity Benefits

The model provisions on sickness and maternity benefits cover both benefits in-kind (medical care, hospital treatment or pharmaceuticals) and cash benefits (e.g. sick pay or maternity pay). Wherever a contracting party makes entitlement to cash benefits or benefits in-kind subject to minimum periods of insurance then it must take into consideration any periods of insurance spent in the other contracting party²⁸³. The model provisions therefore confirm the principle of aggregation. Periods of insurance are defined according to the law of the country in which they are completed²⁸⁴. For example, State A and State B adopt a bilateral agreement based on the model provisions. In State A entitlement to sickness benefits is based on periods of employment whereas in State B it is based on periods of residence. The model provisions oblige State A to consider the time each person has spent residing in State B whilst State B must take into account only the time during which a person worked in State A.

For those countries where entitlement to cash benefits does not depend on actual insurance but on insurance in the past, the model provisions provide for a possible supplement²⁸⁵. In this case the aggregation principle will only apply to sickness and maternity cash benefits if the claimant's last place of economic activity was the contracting party in which s/he makes his/her application. This means that if someone makes an application for a sickness or maternity cash benefit in the contracting party other than the one in which s/he was last economically active, then the contracting party in which the application is made does not have to take periods of insurance completed in the other contracting party into consideration. For example States A and B both base entitlement to earnings-related maternity benefits on periods of employment and they have both implemented the model provisions. A woman lives in State A and worked there for 18 months before taking up an occupation in State B where she worked for 6 months before she becomes pregnant and decides to give up her work in State B. She resides in State A and so applies for cash maternity benefits there. In State A earnings-related cash benefits are only paid to those with 2 years insurance record and because State A is not the last place in which she pursued an economic activity it is not obliged to take into consideration the 6 months she has spent working in State B and so State A is in a position to refuse the payment of an earnings-related maternity benefit. Of course, the woman might be entitled to a maternity benefit in State B who will have to take into consideration the insurance periods in state A.

Those who fall within the personal scope of the model provisions are entitled to benefits in-kind and cash benefits if they leave the competent state and go to the other contracting party. The provisions of these benefits depends on whether the person concerned is visiting the other contracting party as a temporary stay (for example on a business trip or holiday) or whether that person has their ordinary (permanent) residence in the other contracting party.

²⁸³ Article 13(1) of the model provisions

²⁸⁴ Article 1(k) of the model provisions

²⁸⁵ Article 13(2) of the model provisions

There are no strict time limits to determine whether or not the time someone spends in the other contracting party is a temporary stay or not. The question is whether someone is ordinarily resident and this will involve looking at their ties in the country. For example: do they have a property in the other contracting party? Do they own or rent the property in which they are staying and if it is rented then for how long? If they have a partner and children where do they live?

Those who are on a temporary stay in the other contracting party can only receive in-kind benefits if they require immediate medical treatment. For instance, this would cover a tourist who is injured in a skiing accident or someone on a business trip who suffers a heart attack. In this situation the benefits in-kind are provided by the contracting party according to its health care system as if the person concerned were covered by that system²⁸⁶. This is important because the range of treatment available under the social security health care system varies from one state to the next. In order to operate an efficient social health care system the state must control the treatment available, perhaps excluding cosmetic surgery, alternative medicines or treatments which that state still considers to be experimental. The same can be said for the range of pharmaceuticals and medical appliances, some states may only prescribe generic drugs and a drug that is considered safe in one country might not be acceptable in another. When someone requires immediate treatment whilst on a short stay in another country it would be impossible for the doctors treating that person to first ascertain whether the medical care and pharmaceuticals required are actually available under the patient's own social health care system. In this case it is more efficient simply to treat that patient as if s/he were covered by the state in which the treatment is being provided.

The cost of this emergency treatment is not met by the contracting party in which the person is staying but by the competent state²⁸⁷. The competent state is therefore under a duty to reimburse the contracting party that provides the treatment. If the contracting party which administers the treatment provides its people with a much wider range of treatment than available to those in the competent state then there is a danger that the competent state could be faced by a relatively high bill. In order to allow the competent state to maintain some cost control it is possible for the contracting parties to agree that more expensive medical treatment (especially prostheses and appliances such as pace-makers) should be subject to prior agreement by the competent state. However, this prior agreement is not necessary if delaying treatment would cause serious danger to the patient's life or health²⁸⁸.

Cash-benefits for sickness and maternity will also be available to those who fall ill or are injured whilst on a temporary stay in the other contracting party. These are paid by the competent state at the rate set in the competent state²⁸⁹.

Those who have their ordinary residence in the contracting party other than the competent state are entitled to benefits in-kind provided by the state of residence as if that person were insured under its provisions. This is the same situation as those who require treatment whilst on a temporary stay except that it covers *all* medical treatment and not just emergency treatment. Again, as with those who are only on a temporary stay, it is the competent state that must reimburse the costs of any medical treatment administered in the state of residence. This is potentially costly for the competent state and it is possible for the

²⁸⁶ Article 14(1) of the model provisions

²⁸⁷ Article 14(1) of the model provisions

²⁸⁸ Article 14(2) of the model provisions

²⁸⁹ Article 14(3) of the model provisions

contracting parties to make the provision of the more expensive medical appliances and treatments subject to prior agreement by the competent state²⁹⁰.

Special provisions have been included for frontier workers who may also obtain benefits in the competent state²⁹². For pensioners who are entitled to pensions from both contracting parties the model provisions provide that only the state of residence should be the competent state for such a pensioner and his family members²⁹³. For pensioners who receive a pension from only one contracting party and reside in the other contracting party the model provisions provide similar provisions for them and for their families as for other persons covered (see above)²⁹⁴.

As explained in the preceding paragraphs the system for the provision of benefits in-kind to those who are temporarily or permanently residing in the contracting party other than the competent state requires the reimbursement of the state of treatment by the competent state. The model provisions provide two options by which the reimbursement may be organised²⁹⁵. The first involves the competent state reimbursing the actual amount to the state providing the treatment. In other words the exact cost of each treatment is recorded and an invoice sent to the competent state. The second option allows a greater degree of flexibility, it allows the contracting parties to establish their own rules and regulations. Both alternatives allow the contracting parties to agree that no refunds shall be made by either side. This may be the case where each contracting party is likely to pay roughly the same to the other by way of reimbursement and in which case it is administratively cheaper simply to forego reimbursement altogether.

6.3.2 Invalidity, Old Age and Survivor's Benefits

These benefits are typically long-term periodic benefits, entitlement to which is usually based on extensive periods of insurance. Where entitlement to a benefit is dependent on the completion of a minimum period of insurance the contracting parties are obliged to take into consideration any periods of insurance completed under the legislation of the other contracting party²⁹⁶. Some states operate special pension schemes for those engaged in particular occupations, for example special schemes for teachers, miners or sports persons. These special schemes will only have to aggregate periods of insurance in the other contracting party if these periods were completed under a similar special scheme or within the relevant occupation²⁹⁷. For example States A and B have adopted the model provisions. A person works in State A as a miner for 10 years and in State B as a miner for 5 years and as an office worker for 5 years. State A has a special scheme for miners under which they may claim a full pension after 15 years of employment. State B does not have a special scheme, nonetheless the 5 years spent working as a miner in State B will still be taken into consideration in determining entitlement. The person would therefore be entitled to a pension in State A. If the minimum period of employment as a miner is 20 years in State A, then the person in question would not be entitled to a miner's pension but would be treated

²⁹⁰ Article 15 of the model provisions

²⁹² Article 16 of the model provisions

²⁹³ Article 17(1) of the model provisions

²⁹⁴ Article 17(2) to (4) of the model provisions

²⁹⁵ Article 19 of the model provisions

²⁹⁶ Article 20(1) of the model provisions

²⁹⁷ Article 20(2) of the model provisions

under the general scheme for employees where he would be treated as having 20 years of insurance.

Some states make the payment of an invalidity or survivor's pension conditional on the risk, i.e. long-term incapacity for work or death, occurring within their territory. In other words, according to their national law if someone were to die in another country (for example whilst on holiday) then no pension would be paid. For such cases the model provisions provide that if the risk occurs in the other contracting party it must be treated as having occurred in the competent state²⁹⁸.

The model provisions provide two alternatives for the calculation of the amount of benefit for those persons who have been subject to the social security pension law of both contracting parties.

The first alternative is called the "*pro rata temporis calculation*". Each contracting party must go through the following stages:

- **Stage One:** the first question is if the person concerned is entitled to a pension according to your national law for the periods s/he has been insured under your national legislation alone? During this first stage *no* aggregation takes place. If the person is entitled to a benefit solely in accordance with the period of insurance completed within your territory then your country shall pay that benefit. If no pension can be awarded without using the principle of aggregation then go to stage two.
- **Stage Two:** add together the periods of insurance completed in each contracting party, if this total is enough to gain entitlement to a pension in your country then go to stage three. If the combined period of insurance is still too low then no pension can be awarded from your country at this time.
- **Stage Three:** calculate the theoretical amount, this is the pension the person would receive had all the aggregated periods of insurance been completed in your country.
- **Stage Four:** your country must pay a pension which is in proportion to the insurance period completed in your country compared to the total aggregated insurance period. Where your state has a maximum insurance period that is taken into account this shall be applied to the aggregated amount when calculating benefits.

This four-stage process is best understood using an example: State A and State B have selected this alternative from the model provisions. In State A a full (basic) pension of 800 EUR per month is paid to those who have been insured for 40 years (2% for each year), provided they have been insured for at least 20 years. In State B a pension of 50% of the maximum national pension (1000 EUR) plus 1% for each year is paid to those who have been insured for at least 25 years, the maximum period taken into account being 50 years. A worker is insured in State A for 18 years and State B for 24 years.

- **Stage One:** neither contracting party is able to pay this worker a pension under national law solely on the basis of the insurance periods s/he has completed in their territory.

²⁹⁸ Article 20(3) of the model provisions

- **Stage Two:** aggregating the periods of insurance completed in each contracting party gives a total of 42 years of insurance, this is enough to satisfy the entitlement conditions in both states.
- **Stage Three:** the theoretical amount in State A is therefore 800 EUR, and $50\% + 42 \times 1\%$ of 1000 EUR = 920 EUR in State B.
- **Stage Four:** the pension to be paid by State A is equal to $18/40 \times 800$ EUR = 360 EUR per month, note that the fraction used is not 18/42 because the maximum insurance period in State A is 40 years. The pension to be paid by State B is equal to $24/42 \times 920$ EUR = 526 EUR (rounded) per month. This gives the person a total pension of 886 EUR per month.

The second alternative is referred to as the “*direct calculation*”. In this case the pensions are generally calculated in each contracting party according to the insurance periods completed in that contracting party. The advantage of the second alternative is that there is no need to know the *precise* periods for which a person was insured in the other state but to know them only as far it is necessary to determine entitlement to a pension. A special pro rata temporis calculation is only provided for in two cases, this is done using not the periods of the other contracting party but fixed denominators. These are the same fixed denominators as are used in the European Convention on Social Security for special non-contributory benefits in relation to the equal treatment and the calculation of the theoretical amount²⁹⁹:

- if the amount of a pension or part of a pension is not directly dependent on the periods completed then this pension or part of pension shall be calculated in proportion of the ratio of the insurance periods completed in the relevant country and 30 years, and
- where according to the laws of a country for the calculation of invalidity or survivor’s pensions periods after the occurrence of the contingency are taken into account, these periods are only to be taken into account in proportion to the ratio of the insurance periods completed in the relevant country and two thirds of the period between the person turning 16 years of age and the date of the contingency. If in such a country a person has completed 10 insurance years, the contingency occurs when the claimant is 36 years old and the “additional periods” would be taken into account up to the age of 60, this country does not have to take into account the full period (24 years) but only $24 \times 10/20 = 12$ years.

If the periods completed in one contracting party are more than the fixed denominator, then the full benefit or the full additional period is to be taken into account. Please note that this special pro rata calculating does not apply to pensions that are paid as a result of supplementary insurance or benefits that are means-tested and paid in order to guarantee a sufficient minimum income. These benefits would be payable in full.

This direct calculation is best understood using the same example as above:

- **Stage One:** neither contracting party is able to pay this worker a pension under national law solely on the basis of the insurance periods s/he has completed in their territory (the same as the first stage of the pro rata temporis calculation)
- **Stage Two:** aggregating the periods of insurance completed in each contracting party gives a total of 42 years of insurance, this is enough to satisfy the entitlement

²⁹⁹ Article 8(3) and Article 29(3)(b)(ii) of the European Convention (see under 5.6.2)

conditions in both states (the same as the first stage of the pro rata temporis calculation)

- **Stage Three:** State A calculates its pension directly on 18 years and has therefore to pay $18 \times 2\%$ of 800 EUR = 288 EUR per month. In State B 50% of the maximum national pension does not depend on the length of periods completed, so from this part of the pension only 24/30 would be payable. State B has therefore to pay a monthly pension of 24/30 of 50% of 1000 EUR + $24 \times 1\%$ of 1000 EUR = 400 EUR + 240 EUR = 640 EUR. This gives the person a total pension of 928 EUR per month.

Where a person has completed less than one year of insurance under the legislation of one of the contracting parties and that period is insufficient to gain entitlement under national law alone, that contracting party shall not be obliged to pay a pension under the model provisions³⁰⁰. However, that period of insurance shall be taken into account in the other contracting party if the person has completed more than one year of insurance there³⁰¹. For example States A and B adopt the model provisions. State A requires 20 years of insurance before granting a pension, whilst State B requires only 15 years. A person works in State A for 19.5 years and in State B for just 6 months. This person is not entitled to any benefit according to the national laws in State B and because s/he has been insured there for less than a year State B is not obliged to apply the model provision rules on aggregation etc. However, State A is still obliged to apply the model provisions and it must take into consideration the 6 months of insurance completed in State B not only for entitlement to pension but also for the calculation of the pension, in which case the person concerned becomes entitled to a pension from State A on the basis of 20 years.

6.3.3 Death Grants

Death grants refer to lump sum payments made upon an insured person's death. They are often subject to minimum periods of insurance, these typically have to be fulfilled by the deceased rather than his/her survivors. Where minimum periods of insurance are required then the principle of aggregation shall apply³⁰².

When someone dies in one contracting party his/her death shall be treated in the other contracting party as if it had occurred there. This rule affects those countries that only pay benefits if the contingency occurs within their own territory³⁰³.

It may be that there is entitlement to a death grant from both contracting parties. In this case the contracting party in which the person died is responsible. If the person died outside the territory of both contracting parties then the death grant should be paid by his/her place of last insurance³⁰⁴.

³⁰⁰ Article 22(1) of the model provisions

³⁰¹ Article 22(2) of the model provisions

³⁰² Article 23(1) of the model provisions

³⁰³ Article 23(2) of the model provisions

³⁰⁴ Article 23(3) of the model provisions

6.3.4 Occupational Injuries and Disease Benefits

This social risk covers long and short-term incapacity as well as death caused by occupational injuries and diseases. The type of benefits available are both cash benefits and benefits in-kind. The cash benefits may be periodic or lump sum in nature.

Occupational diseases generally develop over time as a result of exposure to harmful substances, such as asbestos, or hazardous or stressful working environments, such as mines or noisy factories. Problems may arise where someone has been exposed to the same harmful substances or been subjected to a similar hazardous environment in both contracting parties. In this case the model provisions state which contracting party must provide the necessary benefits (benefits in cash and benefits in-kind). This is the contracting party in which the conditions for entitlement to benefit were last satisfied. This need not be the contracting party in which the person was last employed in the hazardous occupation, it may also be the other party if this is the only party in which the conditions for entitlement are fulfilled³⁰⁵.

One condition that may be applied to benefits for occupational diseases is that the claimant is diagnosed for the first time in the state's own territory. The model provisions overcome this obstacle by stating that where a person is diagnosed in one contracting party they are treated as if they were diagnosed in the other. Contracting parties cannot therefore rely upon this condition to avoid their obligations to pay benefits for occupational diseases. Another possible condition applied to benefits for occupational diseases is that the disease is diagnosed within a particular period after a person has stopped working in the hazardous field. The model provisions state that account must be taken of periods of employment in the other contracting party. The same applies to any condition whereby a person must have been subjected to a particular substance or working environment for a minimum period.

Therefore, where a person has been exposed to dangerous substances or a hazardous working environment in both contracting parties and that person has developed an occupational disease as a result, the first step in determining which contracting party is responsible for providing benefits is to look at the conditions of entitlement in each contracting party. The contracting party which fulfils the conditions last is the party responsible. For example States A and B have implemented the model provisions. State A will pay a pension for occupational deafness according to the following conditions:

- i) regular exposure to noise above 100 decibels for a period of at least 4 years,
- ii) deafness occurs within 1 year of leaving the said occupation, and
- iii) the deafness must be diagnosed by a doctor within the territory of State A

State B imposes these conditions:

- i) regular exposure to noise above 100 decibel for a period of at least 6 years

A person works as an airport runway operative where s/he is regularly exposed to the noise of aircraft taking off. S/he works first in this job in State A for 3 years and then in State B for 2 years. As soon as the person leaves this job s/he is diagnosed by a doctor in State B as suffering from occupational deafness. The contracting party responsible for the payment of the benefit is State A. State B is the party of the last employment but the required 6 years of

³⁰⁵ Article 24 of the model provisions

exposure to risk are not fulfilled even taking into account the periods in State A. So State A is the last contracting party in which the person satisfied the conditions. State A's requirement of 4 years of exposure is satisfied because State A must take into consideration the periods of employment completed in State B. State A cannot rely upon the condition that the disease be diagnosed in State A as the model provisions expressly forbid this. Neither can State A say that the disease was not diagnosed within 1 year of the person leaving his/her occupation in State A, this is because the model provisions oblige State A to treat the period of employment completed in State B as if it had occurred in State A.

For cases of sclerogenic pneumoconiosis (especially asbestose and silicose) the model provisions provide for either a sharing of the costs of all cash benefits (or only of the pension) by the two parties or the granting of pensions from both parties according to the period completed in each party for old age pensions³⁰⁶.

Special provisions apply to those who have suffered from an occupational injury or disease and who spend time in the other contracting party³⁰⁷. Unlike non-work related injuries or illnesses those who have suffered an occupational injury or disease are treated the same whether they are in the other contracting party on a temporary or permanent basis. In either case they are entitled to benefits in-kind (medical care etc.) provided by the state of residence in accordance with its social health care system at the expense of the competent state³⁰⁸. In the case of those on a temporary stay there is no need for them to show that they are in immediate need before they become entitled to medical treatment. As explained in section 6.3.1 above, a temporary stay may include very short trips for the purpose of business or holiday. Cash benefits will also have to be paid to those who are ordinarily resident or have a temporary stay in the other contracting party. These benefits are paid by the competent state according to its legislation.

Where someone is already in receipt of a benefit for an occupational disease from one contracting party (State A) but they later suffer an aggravation of that disease whilst employed in the other contracting party (State B), they are entitled to an increased benefit to reflect this aggravation. The question is which party is obliged to pay this increase and how much should it be? If the person was not engaged in an occupation likely to cause or aggravate the disease whilst in State B then State A will have to reassess that person's pension and bear the cost of any increase. If the person has been engaged in such an occupation in State B then State B is responsible for the cost of the aggravation. State B calculates this by firstly working out how much the person would have been paid under the national law in State B had the first part of his/her disease developed whilst the person was insured in State B. State B must then calculate how much the person would receive under the national law in State B for their full invalidity, including the aggravation. State B is then obliged to pay the difference between these amounts as a supplement to the benefit that the person already receives from State A.

6.3.5 Unemployment Benefit

The payment of unemployment benefit, particularly contributory benefit, is often made subject to conditions of minimum periods of insurance. Likewise the duration for which

³⁰⁶ Article 24(5) of the model provisions

³⁰⁷ Article 25 of the model provisions

³⁰⁸ For a more detailed explanation of how the provision of benefits in-kind operates see section 3.3.1 above.

unemployment benefit is paid is sometimes made dependent on the period for which a person was insured prior to losing their occupation. In both these cases the model provisions oblige contracting parties to take into consideration periods of insurance completed in the other contracting party³⁰⁹.

Special rules apply to frontier workers who become wholly or partially unemployed. Partial unemployment happens when someone is forced to reduce their hours of work. These special rules give contracting parties alternative suggestions as to which party should be responsible for the payment and costs of a frontier worker's benefits when that worker becomes wholly unemployed³¹⁰.

6.3.6 Family Allowances

The model provisions are restricted to family allowances (for the differences to family benefits see under 5.6.6). They begin by advancing the principle of aggregation and obliging each contracting party to take into consideration periods of insurance completed in the other contracting party³¹¹. The model provisions have to deal with the problem that arises when someone works in one contracting party (the competent state) but his/her children live in the other contracting party. As regards the provision of family allowances in these circumstances the contracting parties are offered a number of alternatives³¹². The first alternative is that benefits for family members resident in the other contracting party are paid by the competent state in accordance with the national rules in the competent state as if those family members were resident in the competent state. It is possible for the contracting parties to agree that the competent state shall pay the benefit to the family using the social security infra-structure of the state of residence. In other words the benefit is still calculated according to the rules in the competent state and is still financed by the competent state but is paid through the administration of the state where the family resides.

The second alternative is that the family members are given a benefit by the state of residence which is calculated according to the rules in operation in the state of residence. The second alternative then gives the contracting parties a further choice of who should bear the costs of these benefits. This may be either the competent state or the state of residence.

The legislation used to calculate the amount of benefit paid to family members who reside outside the competent state is an important issue. This is because the standard of living and amount of benefits could vary greatly from one country to another. If the standard of living in State A is very high and that in State B a lot lower, then the family allowances paid in State A are likely to be considerably greater than those awarded in State B. When someone works in State A and leaves his/her family in State B if his/her children are given a family allowance according to the law in State A then those children will receive a benefit that is far higher than that of other children in State B. If the worker's family lives in State A and the worker is employed in State B the children in State A would receive a benefit that is relatively low. For this reason the precise organisation of family allowances is left to the contracting parties to decide. It is hoped that the contracting parties will look at the various

³⁰⁹ Article 27 of the model provisions

³¹⁰ Article 28 of the model provisions

³¹¹ Article 29 of the model provisions

³¹² Article 30 of the model provisions

options contained in the model provisions and select those that are fairest in their particular circumstances.

The situation may arise where the same child is entitled to two benefits at the same time. This will often happen where both the father and the mother are working and therefore are entitled to a family allowance in respect of the same child. In this situation the contracting party where the child is resident must pay the benefit according to its national laws and at its own expense. However, if the other contracting party would have paid a higher benefit then that party must pay the difference as a supplement to the benefit already paid by the state of residence³¹³.

6.4 Part Four: Miscellaneous Provisions

The administration of any bilateral agreement based on the model provisions is left mainly to cooperation between the parties³¹⁴. The parties are encouraged to establish liaison offices in each state and treat all requests for information and assistance from the other contracting party with due diligence and free of charge. The communication needed for the application of the model provisions should take place in each person's official language³¹⁵. No claim or document should be rejected because it is in the official language of the other contracting party. Where there are time-limits on the submission of claims for benefits or appeals concerning benefits any application sent to the wrong contracting party should be treated as if it was actually sent to the right one³¹⁶.

Special measures are also provided for the recovery of undue payments. In other words when a contracting party over-pays a beneficiary in the other contracting party special measures can be taken whereby that amount can be deducted from the recipient's benefits and repaid to the competent state³¹⁷. Each contracting party must also respect enforceable court decisions or enforceable documents produced in the other contracting party concerning social security contributions and other claims, these decisions and documents must be accorded the same treatment as similar decisions and documents produced within its own territory³¹⁸.

For the resolution of disputes the model provisions encourage the contracting parties to first resolve their differences through negotiation. If this fails then the dispute shall be placed before an arbitration tribunal. The model provisions give directions as to how this tribunal shall be constituted and sets time limits to ensure that it is up and running as quickly as possible³¹⁹. Once constituted the decision of the arbitration tribunal is final.

³¹³ Article 31 of the model provisions

³¹⁴ Article 32 of the model provisions

³¹⁵ Article 33 of the model provisions

³¹⁶ Article 35 of the model provisions

³¹⁷ Article 37 of the model provisions

³¹⁸ Article 38 of the model provisions

³¹⁹ Article 40 of the model provisions

6.5 Part Five: Transitional and Final Provisions

The transitional measures envisaged within the model provisions give the contracting parties the choice of two alternatives. These alternatives deal with how periods of insurance acquired before the agreement entered into force should be treated as well as the back-dating and reassessment of benefits which is provided only in the second alternative³²⁰.

The final provisions deal with ratification and the entering into force of the agreement³²¹. The model provisions envisage that any agreements based upon them will last indefinitely³²², however contracting parties are free to denounce the agreement. The denunciation may take place at any time and is not subject to any conditions. However, any benefits granted under the agreement will have to continue to be paid, the same goes for any benefit exported under the agreement. As regards insurance periods completed before denunciation these must be retained and continue to be used for the purpose of aggregation and calculation of benefit amounts. In the event of one party denouncing the agreement the parties must agree as to how insurance periods completed during the agreement shall be treated, if no agreement can be reached then this must be determined by the national legislation of each contracting party³²³.

³²⁰ Article 41 of the model provisions

³²¹ Article 42 of the model provisions

³²² Article 43 of the model provisions

³²³ Article 44 of the model provisions

CHAPTER SEVEN

The European Social Charter

INTRODUCTION

Until now this Short Guide has described a number of conventions and agreements that are exclusively designed to deal with international social security co-ordination. In order to provide a full picture of the Council of Europe's legal instruments for social security co-ordination one must also consider the European Social Charter and the Revised European Social Charter. These two instruments are not specifically focused upon co-ordination; in fact their provisions go far beyond the realms of social security. They act as the social counter-part to the European Convention on Human Rights. The European Convention on Human Rights deals with fundamental civil and political rights such as freedom from torture, the right to a fair trial and the freedom of speech. The European Social Charter and the Revised Social Charter deal with fundamental social rights such as the right to work, the freedom to associate, the right to collectively bargain, the right to safe and healthy working conditions, the right to appropriate facilities for vocational training, the right to social security, the right to social and medical assistance, the right to social welfare services and the right of migrant workers to protection and assistance. Together the European Convention on Human Rights and the European Social Charter (and the Revised Social Charter) combine to ensure that the people they protect do not just have a tolerable life free from unjustified interference from the state but a life of dignity and, wherever possible, independence. The Chapter contains the following sections:

- 7.1 The legal instruments
- 7.2 The Articles of the European Social Charter and the Revised Social Charter which relate to International Social Security Co-ordination

7.1 The Legal Instruments

7.1.1 The European Social Charter

The European Social Charter was opened for signature in 1961 and entered into force in 1965. It contained a total of 19 articles. In 1996 an Additional Protocol to the European Social Charter added a further 4 articles. The European Social Charter is a 'menu instrument'. In order to ratify it contracting parties must choose at least 10 articles³²⁴. Of these 10 articles at least five must come from the hard core articles. The hard core articles include the right to social security and the right to social and medical assistance.

³²⁴ Alternatively, 45 numbered paragraphs. See Article 20 of the European Social Charter.

7.1.2 The Revised European Social Charter

The Revised Social Charter was opened for signature in 1996 and entered into force in 1999. It amends some of the existing rights contained within the European Social Charter and added a series of new rights, including the right to protection in case of termination of employment, the right to protection against poverty and social exclusion and the right to housing. The aim of the Revised Social Charter is to secure higher standards as well as develop a global policy against problems such as poverty.

7.1.3 A Supervision Mechanism

Unlike the other instruments discussed in this short guide the European Social Charter and the Revised Social Charter operates with a supervision mechanism. This supervision mechanism is based on a system of reporting. The contracting parties produce regular national reports according to a uniform structure. These reports are produced by the national governments; they are then handed to representative organisations of labour and management so that these organisations may make written observations. Following these written observations the national reports are handed to the European Committee of Social Rights. This Committee is formed from 9 independent experts elected by the Committee of Ministers of the Council of Europe. These elected experts are then joined by a representative of the International Labour Organisation. The European Committee of Social Rights prepares a series of conclusions indicating whether or not the information provided in each national report complies with the articles of the European Social Charter or the Revised Social Charter that have been chosen by the contracting party concerned. The conclusions of the European Committee of Social Rights are then passed on to the Governmental Committee, which is composed of government representatives as well as observers of the social partners. The Government Committee prepares decisions for the Committee of Ministers. The Committee of Ministers is composed of a governmental minister from each contracting party. The Committee of Ministers then adopts a resolution on the entire supervision procedure and separate recommendations which are addressed to specific contracting parties that are considered to be in violation³²⁵.

In 1998 an Additional Protocol entered into force in relation to the European Social Charter providing for a collective complaints system. Under this additional system certain representative organisations are entitled to make complaints to the European Committee of Social Rights concerning violations of the European Social Charter and its Protocols. These organisations include international representatives of management and labour (such as ETUC and UNICE), national representatives of management and labour and certain international and national non-governmental organisations. The European Committee of Social Rights first determines whether or not the complaints are admissible and if so prepares a report for the Council of Ministers which is then free to adopt a recommendation addressed to the contracting party to resolve any violation of the European Social Charter.

³²⁵ This short guide is unable to deal with the very extensive 'case law' that has grown from the conclusions of the European Committee of Social Rights and the author would strongly recommend that those interested in this field read *Social Protection in the European Social Charter (Human Rights, Social Charter monographs - No 7)* (1999) Council of Europe Publishing and access the database of the conclusions of the European Committee of Social Rights which is available on the Council of Europe's website, <http://www.coe.int>

7.2 The Articles of the European Social Charter and the Revised Social Charter which relate to International Social Security Co-ordination

The following articles of the European Social Charter and the Revised Social Charter have some impact upon social security co-ordination:

- **Article 12:** the right to social security
- **Article 13:** the right to social and medical assistance

The European Social Charter and the Revised Social Charter distinguish between social security that is dealt with in Article 12 and social and medical assistance that is dealt with in Article 13. This distinction is the same as that used between the Interim Agreements on the one hand and the European Convention on Social and Medical Assistance on the other³²⁶.

The substance of these articles that concern social security co-ordination have not been amended or adjusted by the Revised Social Charter. Each of these two articles will now be addressed in turn.

7.2.1 Article 12: The Right to Social Security

Article 12 deals with the substance of social security systems in the contracting parties. Firstly, it obliges the contracting parties to establish a social security system³²⁷. It then sets minimum standards for this system, these standards relate inter alia to the coverage of the system, the conditions of entitlement to benefits and the amount of benefits³²⁸. It further states that every contracting party bound by Article 12 must endeavour to progressively improve its system of social security³²⁹.

As far as social security co-ordination is concerned Article 12 provides in paragraph 4 for the basic principles of equal treatment, exportation of benefits and the aggregation of insurance periods. Contracting parties must take steps to ensure these basic principles through bilateral and multilateral agreements or “*by other means*”.

Personal scope: whereas Article 12(1) to (3) apply only to nationals of other contracting parties who are lawfully resident or working regularly within the contracting party’s territory, Article 12(4) is applicable to all nationals of the other contracting parties³³⁰. It is important to note that the coverage of Article 12 is not based on reciprocity. The reader will recall that the European Social Charter and the Revised Social Charter are ‘menu type instruments’. This means that some contracting parties have accepted the provisions of Article 12 whereas others have not³³¹. The fact that Article 12 is not based on reciprocity

³²⁶ See section 3.2.2 of this Short Guide

³²⁷ Article 12(1) European Social Charter/Revised Social Charter

³²⁸ Article 12(2) European Social Charter/Revised Social Charter

³²⁹ Article 12(3) European Social Charter/Revised Social Charter

³³⁰ See Appendix to the European Social Charter and the Revised Charter dealing with the “Scope of the Charter in terms of persons covered”. The Appendices also provide that refugees and stateless persons legally residing within the contracting party should be given treatment that is as favourable as possible.

³³¹ A list of signatures and ratifications to the European Social Charter and the Revised Social Charter and its Article 12(1) to (4) and Article 13(1) to (4) as of 1st September 2003 is attached (Appendix II). For the actual list as well as the references to the texts of the European Social Charter and Revised Social Charter see Appendix I.

means that the protection offered under Article 12 cannot be refused because the person concerned comes from a contracting party that has not adopted that Article. This applies even in respect to Article 12(4)³³².

Equality of treatment: the principle of equal treatment enshrined within the European Social Charter and the Revised Social Charter is intended to eliminate both direct and indirect discrimination³³³.

The prohibition of direct discrimination therefore prevents contracting parties paying a benefit to its own nationals but refusing to pay the benefit to a national from another contracting party. Contracting parties are also prevented from imposing extra conditions of entitlement on foreigners who are covered by the European Social Charter or Revised Social Charter, e.g. by requiring that all foreigners complete an additional period of insurance before they receive any benefit. Direct discrimination would also involve paying foreigners less because they are not nationals of the contracting party.

The European Committee of Social Rights pays close attention to ensuring that even those measures which appear to affect both foreigners and nationals do not, in fact, have a greater proportional affect on foreigners. In order to do this it will take into consideration statistical data concerning migrants. One example of indirect discrimination that has been the topic of considerable debate with regards to the European Social Charter and the Revised Social Charter has been the requirement by many contracting parties that child benefits will only be paid to children who reside within their territory³³⁴. The European Committee of Social Rights has consistently found this practice to be indirect discrimination in that foreign nationals are more likely to have family members living abroad³³⁵, but in these cases the rate of those benefits may be adjusted in order to reflect the standard of living in the contracting party where the children are living³³⁶.

Despite their strict approach to equal treatment on the grounds of nationality the European Social Charter and the Revised Social Charter do allow states to impose minimum periods of residence for foreigners before entitlement is granted to non-contributory benefits³³⁷. This conditional equality of treatment may also be found in the Interim Agreements and the European Convention on Social Security.

Where contracting parties to the European Social Charter and the Revised Social Charter impose such residence conditions the European Committee of Social Rights will investigate whether or not the period required to be proportional to the reason why such a condition is imposed. Contracting parties that operate residence requirements of this kind are therefore obliged to explain why such a requirement is needed and why it has to be that long. The European Committee of Social Rights has used the periods prescribed in the Interim Agreements and the European Convention on Social Security as a guide but it insists on

³³² See general observations of the European Committee of Social Rights with regard to Article 13(4) of the European Social Charter, Conclusions VII, p. 77 and General Introduction to Article 12(4) in the Conclusions XIII-4, p.54

³³³ See section 1.4.1 of this Short Guide for a definition of these terms

³³⁴ This issue has appeared consistently within the Conclusions of the Committee since supervision cycle XIV

³³⁵ General Introduction to Conclusions XIII-4, p. 44 and XVI-1, pp. 9 and 10

³³⁶ General Introduction to Conclusions XIII-4, pp. 44 and 45

³³⁷ Appendix to Article 12(4) to European Social Charter/Revised Social Charter

assessing each contracting party on the facts. It has even indicated that the periods laid down in the Interim Agreements are very long³³⁸.

Exportation of benefits: the European Committee of Social Rights has concluded that the principle of exportation will apply in relation to benefits for old age, invalidity, survivors as well as pensions for occupational injuries and diseases and death grants. This means that the export of these benefits should not be refused or made subject to conditions³³⁹. The application of this principle in relation to other benefits, especially unemployment benefits and sickness cash benefits will be assessed on a case by case basis taking into consideration the special features of these schemes³⁴⁰.

Aggregation of qualifying periods: the contracting parties are asked to comment in their national reports on if and to what extent they take into consideration qualifying periods completed in other contracting parties, especially in relation to nationals of contracting parties that are not covered by the European Union Co-ordination Regulation 1408/71.

The inter-relationship between Article 12 of the European Social Charter/Revised Social Charter and the co-ordination instruments of the Council of Europe: as explained above the co-ordination instruments of the Council of Europe are taken into consideration by the European Committee of Social Rights when assessing compliance with the European Social Charter and the Revised Social Charter. However, the mere fact that a contracting party has ratified the Interim Agreements or the European Convention on Social Security is not sufficient in itself to guarantee compliance. The European Committee of Social Rights will look carefully at the actual situation in each contracting party before arriving at its conclusions. It has indicated that the Interim Agreements are not sufficient for the implementation of Article 12(4) because they are subordinate to other bilateral and multilateral agreements and they have not been adopted by all of the contracting parties to the European Social Charter and Revised Social Charter. It has also indicated that the maximum periods of residence contained within the Interim Agreements before the granting of equal treatment in respect of non-contributory benefits are very long³⁴¹. In this respect the European Social Charter and the Revised Social Charter may go beyond the requirements contained within the Council of Europe's specific instruments for social security co-ordination.

Furthermore, ratifying the European Convention on Social Security is not enough on its own to satisfy Article 12(4) given that the European Convention on Social Security does not extend to all of the contracting parties of the European Social Charter and the Revised Social Charter. The European Committee of Social Rights also pointed out that not all of the provisions of the European Convention on Social Security are immediately effective and some therefore rely upon the conclusion of further bilateral and multilateral agreements³⁴². However, the European Convention on Social Security is potentially useful in enabling contracting parties to honour their commitment under Article 12(4), provided of course, that they ratify the Convention and that the principles of Article 12(4) are taken into consideration when bilateral or multilateral agreements are concluded.

³³⁸ General Introduction to Conclusions XIII-4, p. 52

³³⁹ Conclusions III, Norway, p. 66

³⁴⁰ General Introduction to Conclusions XIII-4, p.45

³⁴¹ General Introduction to Conclusions XIII-4, p. 52

³⁴² General Introduction to Conclusions XIII-4, p. 49

7.2.2 Article 13: The Right to Social and Medical Assistance

Article 13 firstly obliges the contracting parties to provide social and medical assistance to those who have insufficient resources and are unable to obtain those resources without help³⁴³. It then states that those persons who are in receipt of assistance benefits must not suffer any reduction in their social and political rights simply because they are receiving social and/or medical assistance³⁴⁴. It further states that contracting parties must also ensure that public and private services are available to help prevent, remove or alleviate personal or family need³⁴⁵.

As far as co-ordination is concerned, Article 13(4) requires contracting parties to provide the rights mentioned above on an equal footing to nationals of other contracting parties lawfully within their territories as they do to their own nationals. Article 13(4) expressly states that contracting parties shall treat nationals of other contracting parties in accordance with the provisions of the European Convention on Social and Medical Assistance. This Convention provides for the equal treatment of the nationals of contracting parties and sets down rules on repatriation. The basic rule as regards repatriation is that no person shall be repatriated solely because they are in need of social and medical assistance. The Convention does provide for some exceptions to this basic rule which are described in section 4.2.4 of this Short Guide. The rules contained within this Convention are binding on all those contracting parties that accede to Article 13(4) of the European Social Charter or Revised Social Charter, whether or not that contracting party has ratified the Convention on Social and Medical Assistance³⁴⁶.

Personal scope: As for Article 12, there is a different personal scope for the different paragraphs of Article 13. Whereas the first three paragraphs apply only to nationals of other contracting parties who are lawfully resident or working regularly within the contracting party's territory³⁴⁷, paragraph 4 is applicable to all nationals of the other contracting parties lawfully present in its territory. As for Article 12 it is important to note that the coverage of Article 13 is also not based on reciprocity. This means that some contracting parties have accepted the provisions of Article 13 whereas others have not³⁴⁸. The fact that Article 13 is not based on reciprocity means that the protection offered under Article 13 cannot be refused because the person concerned comes from a contracting party that has not adopted that Article. According to the European Committee of Social Rights this applies even in respect to Article 13 (4)³⁴⁹.

For the sake of clarity, and considering that the two categories of foreigners³⁵⁰ covered by Article 13 did not qualify for the same protection because of their different situations, the

³⁴³ Article 13(1) European Social Charter/Revised Social Charter

³⁴⁴ Article 13(2) European Social Charter/Revised Social Charter

³⁴⁵ Article 13(3) European Social Charter/Revised Social Charter

³⁴⁶ Appendix to Article 13(4) to the European Social Charter/Revised Social Charter

³⁴⁷ See the Appendix to the European Social Charter and the Revised Social Charter dealing with the "Scope of the Charter in terms of persons covered". The Appendices also provide that refugees and stateless persons legally residing within the contracting party should be given treatment that is as favourable as possible.

³⁴⁸ A list of signatures and ratifications to the European Social Charter and the Revised Social Charter and its Article 12(1) to (4) and Article 13(1) to (4) as of 1st September 2003 is attached (Appendix II). For the actual list as well as the references to the texts of the European Social Charter and Revised Social Charter see Appendix I.

³⁴⁹ See general observations of the European Committee of Social Rights with regard to Article 13(4) of the European Social Charter, Conclusions VII, p. 77

³⁵⁰ This refers only to those foreigners who fall within the personal scope of the European Social Charter or Revised Social Charter.

European Committee of Social Rights decided to make a clear distinction between those foreigners lawfully residing in the territory of another contracting party and those who were lawfully present there without being resident, examining the situation of the former under paragraphs 1 to 3 and the latter under paragraph 4³⁵¹.

Foreigners lawfully residing or working in the contracting party: these people are entitled to social and medical assistance benefits on the same basis as resident nationals of the contracting party in which these foreigners reside or work. In reality it is those who are lawfully resident within a contracting party that are more likely to be in need of assistance than those who are working and thus receiving an income. The European Social Charter and the Revised Social Charter guarantee that these foreigners receive the rights enshrined in Article 13(1) to (3). They also ensure that foreigners are not exposed to any direct or indirect discrimination in relation to the conditions for or amount of the benefits provided for social and medical assistance. In order to determine whether or not foreigners are treated equally with nationals of the contracting party in which they reside/work, the European Committee of Social Rights will go beyond the legal position and look at the situation in reality. It will pay attention not just to legislation but also ministerial decisions³⁵² and even administrative practice³⁵³. It will also look at the situation as a whole, so if foreigners are excluded from one scheme they may be equally covered by another and so in effect they receive equal treatment³⁵⁴.

Foreigners lawfully present in the contracting party although not residing or working there: this group is not entitled to the extensive range of cash and in-kind benefits for social and medical assistance that should be available for foreigners who reside or work in another contracting party. This group will only be entitled in relation to emergency benefits that are designed to assist those in immediate need. This may include accommodation, food, clothing and emergency medical treatment³⁵⁵. The granting of this assistance may not be subject to a residence requirement³⁵⁶. Emergency benefits must be granted without any direct or indirect discrimination compared to nationals of the contracting party in which they are claimed. The reference in Article 13(4) to the European Convention on Social and Medical Assistance limits the possibility of the contracting parties for repatriation of foreigners lawfully present in a contracting party to those cases where the special conditions of this Convention for repatriation are fulfilled (see above).

³⁵¹ General Introduction to Conclusions XIII-4, pp. 62 and 63

³⁵² Conclusions XI-1, Greece, p. 132

³⁵³ Conclusions X-2, Spain, p. 123

³⁵⁴ Conclusions XIII-2, Belgium, p. 347

³⁵⁵ Conclusions XIII-4, p. 62

³⁵⁶ Conclusions XIV-1, Portugal, pp. 674 and 675

APPENDIX I

**REFERENCES TO THE TEXTS OF THE SOCIAL SECURITY
CO-ORDINATION INSTRUMENTS OF THE COUNCIL OF EUROPE**

ETS No. : 012

- **English** (html)
European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors
<http://conventions.coe.int/Treaty/en/Treaties/Html/012.htm>
- **Français** (html)
Accord intérimaire européen concernant les régimes de sécurité sociale relatifs à la vieillesse, à l'invalidité et aux survivants
<http://conventions.coe.int/treaty/fr/Treaties/Html/012.htm>

ETS No. : 012A

- **English** (html)
Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors
<http://conventions.coe.int/Treaty/en/Treaties/Html/012A.htm>
- **Français** (html)
Protocole additionnel à l'Accord intérimaire européen concernant les régimes de sécurité sociale relatifs à la vieillesse, à l'invalidité et aux survivants
<http://conventions.coe.int/treaty/fr/Treaties/Html/012A.htm>

ETS No. : 013

- **English** (html)
European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors
<http://conventions.coe.int/Treaty/en/Treaties/Html/013.htm>
- **Français** (html)
Accord intérimaire européen concernant la sécurité sociale à l'exclusion des régimes relatifs à la vieillesse, à l'invalidité et aux survivants
<http://conventions.coe.int/treaty/fr/Treaties/Html/013.htm>

ETS No. : 013A

- **English** (html)
Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors
<http://conventions.coe.int/Treaty/en/Treaties/Html/013A.htm>
- **Français** (html)
Protocole additionnel à l'Accord intérimaire européen concernant la sécurité sociale à l'exclusion des régimes relatifs à la vieillesse, à l'invalidité et aux survivants
<http://conventions.coe.int/treaty/fr/Treaties/Html/013A.htm>

ETS No. : 014

- **English** (html)
European Convention on Social and Medical Assistance
<http://conventions.coe.int/Treaty/en/Treaties/Html/014.htm>
- **Français** (html)
Convention européenne d'assistance sociale et médicale
<http://conventions.coe.int/treaty/fr/Treaties/Html/014.htm>

ETS No. : 014A

- **English** (html)
Protocol to the European Convention on Social and Medical Assistance
<http://conventions.coe.int/Treaty/en/Treaties/Html/014A.htm>
- **Français** (html)
Protocole additionnel à la Convention européenne d'assistance sociale et médicale
<http://conventions.coe.int/treaty/fr/Treaties/Html/014A.htm>

ETS No. : 078

- **English** (html)
European Convention on Social Security
<http://conventions.coe.int/Treaty/en/Treaties/Html/078.htm>
- **French** (html)
Convention européenne de sécurité sociale
<http://conventions.coe.int/treaty/fr/Treaties/Html/078.htm>
- **Albanian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review//ETS_78_albanais.doc
- **Macedonian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review//ETS_78_macedonian.doc
- **Romanian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review//ETS_78_romanian.doc
- **Serbian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review//ETS_78_serbian.doc

ETS No. : 078A

- **English**
Supplementary Agreement for the Application of the European Convention on Social Security
<http://conventions.coe.int/Treaty/en/Treaties/Html/078A.htm>
- **Français**
Accord complémentaire pour l'application de la Convention européenne de sécurité sociale
<http://conventions.coe.int/treaty/fr/Treaties/Html/078A.htm>
- **Albanian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review/ETS_78A_albanian.doc
- **Macedonian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review/ETS_78A_macedonian.doc
- **Romanian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review/ETS_78A_romanian.doc
- **Serbian** (word)
http://www.coe.int/T/E/Social_cohesion/Strategic_review/ETS_78A_serbian.doc

APPENDIX II

**STATE OF SIGNATURES AND RATIFICATIONS OF THE SOCIAL SECURITY
CO-ORDINATION INSTRUMENTS OF THE COUNCIL OF EUROPE**

States	Date	ETS No. : 012 European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 012 A Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 013 European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 013 A Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 014 European Convention on Social and Medical Assistance	ETS No. : 014 A Protocol to the European Convention on Social and Medical Assistance	ETS No. : 078 European Convention on Social Security	ETS No. : 078A Supplementary Agreement for the Application of the European Convention on Social Security
Austria	<i>Signature</i>							14/12/1972	14/12/1972
	<i>Ratification</i>							10/06/1975	10/06/1975
	<i>Entry in force</i>							01/03/1977	01/03/1977
Belgium	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	26/11/1976	26/11/1976
	<i>Ratification</i>	03/04/1957	03/04/1957	03/04/1957	03/04/1957	24/07/1956	24/07/1956	21/01/1986	21/01/1986
	<i>Entry in force</i>	01/05/1957	01/05/1957	01/05/1957	01/05/1957	01/08/1956	01/08/1956	22/04/1986	22/04/1986
Cyprus	<i>Signature</i>	03/03/1972	03/03/1972	03/03/1972	03/03/1972				
	<i>Ratification</i>	14/03/1973	14/03/1973	14/03/1973	14/03/1973				
	<i>Entry in force</i>	01/04/1973	01/04/1973	01/04/1973	01/04/1973				
Czech Republic	<i>Signature</i>	25/02/1998	25/02/1998	25/02/1998	25/02/1998			21/06/2002	21/06/2002
	<i>Ratification</i>	08/09/2000	08/09/2000	08/09/2000	08/09/2000				
	<i>Entry in force</i>	01/10/2000	01/10/2000	01/10/2000	01/10/2000				
Denmark	<i>Signature</i>	11/12/1953	04/03/1965	11/12/1953	04/03/1965	11/12/1953	11/12/1953		
	<i>Ratification</i>	30/06/1954	05/05/1965	30/06/1954	05/05/1965	30/06/1954	30/06/1954		
	<i>Entry in force</i>	01/07/1954	01/11/1965	01/07/1954	01/06/1965	01/07/1954	01/07/1954		
Estonia	<i>Signature</i>	01/12/1999	01/12/1999	01/12/1999	01/12/1999	01/12/1999	01/12/1999		
	<i>Ratification</i>	17/04/2002	17/04/2002	17/04/2002	17/04/2002				
	<i>Entry in force</i>	01/05/2002	01/05/2002	01/05/2002	01/05/2002				
France	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	14/12/1972	14/12/1972
	<i>Ratification</i>	18/12/1957	18/12/1957	18/12/1957	18/12/1957	30/10/1957	30/10/1957		
	<i>Entry in force</i>	01/01/1958	01/01/1958	01/01/1958	01/01/1958	01/11/1957	01/11/1957		
Germany	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953		
	<i>Ratification</i>	24/08/1956	24/08/1956	24/08/1956	24/08/1956	24/08/1956	24/08/1956		
	<i>Entry in force</i>	01/09/1956	01/09/1956	01/09/1956	01/09/1956	01/09/1956	01/09/1956		

States	Date	ETS No. : 012 European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 012 A Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 013 European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 013 A Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 014 European Convention on Social and Medical Assistance	ETS No. : 014 A Protocol to the European Convention on Social and Medical Assistance	ETS No. : 078 European Convention on Social Security	ETS No. : 078A Supplementary Agreement for the Application of the European Convention on Social Security
Greece	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	21/04/1977	25/05/1978
	<i>Ratification</i>	29/05/1961	29/09/1961	29/05/1961	29/09/1961	23/06/1960	23/06/1960		
	<i>Entry in force</i>	01/06/1961	01/10/1961	01/06/1961	01/10/1961	01/07/1960	01/07/1960		
Iceland	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953		
	<i>Ratification</i>	04/12/1964	04/12/1964	04/12/1964	04/12/1964	04/12/1964	04/12/1964		
	<i>Entry in force</i>	01/01/1965	01/10/1965	01/01/1965	01/01/1965	01/01/1965	01/01/1965		
Ireland	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	23/02/1979	23/02/1979
	<i>Ratification</i>	31/03/1954	31/03/1954	31/03/1954	31/03/1954	31/03/1954	31/03/1954		
	<i>Entry in force</i>	01/07/1954	01/10/1954	01/07/1954	01/10/1954	01/07/1954	01/07/1954		
Italy	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	14/12/1972	14/12/1972
	<i>Ratification</i>	26/08/1958	26/08/1958	26/08/1958	26/08/1958	01/07/1958	01/07/1958	11/01/1990	11/01/1990
	<i>Entry in force</i>	01/09/1958	01/09/1958	01/09/1958	01/09/1958	01/08/1958	01/08/1958	12/04/1990	12/04/1990
Latvia	<i>Signature</i>	13/04/2000	13/04/2000	13/04/2000	13/04/2000				
	<i>Ratification</i>	13/08/2001	13/08/2001	13/08/2001	13/08/2001				
	<i>Entry in force</i>	01/09/2001	01/09/2001	01/09/2001	01/09/2001				
Lithuania	<i>Signature</i>	19/11/1997	19/11/1997	19/11/1997	19/11/1997				
	<i>Ratification</i>	18/11/1999	18/11/1999	18/11/1999	18/11/1999				
	<i>Entry in force</i>	01/12/1999	01/12/1999	01/12/1999	01/12/1999				
Luxembourg	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	14/12/1972	14/12/1972
	<i>Ratification</i>	18/11/1958	18/11/1958	18/11/1958	18/11/1958	18/11/1958	18/11/1958	13/11/1975	13/11/1975
	<i>Entry in force</i>	01/12/1958	01/12/1958	01/12/1958	01/12/1958	01/12/1958	01/12/1958	01/03/1977	01/03/1977
Malta	<i>Signature</i>					07/05/1968	07/05/1968		
	<i>Ratification</i>					06/05/1969			
	<i>Entry in force</i>					01/06/1969			

States	Date	ETS No. : 012 European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 012 A Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	ETS No. : 013 European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 013 A Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors	ETS No. : 014 European Convention on Social and Medical Assistance	ETS No. : 014 A Protocol to the European Convention on Social and Medical Assistance	ETS No. : 078 European Convention on Social Security	ETS No. : 078A Supplementary Agreement for the Application of the European Convention on Social Security
Moldova	<i>Signature</i>							22/05/2002	22/05/2002
	<i>Ratification</i>								
	<i>Entry in force</i>								
Netherlands	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	05/11/1975	05/11/1975
	<i>Ratification</i>	11/03/1955	11/03/1955	11/03/1955	11/03/1955	20/07/1955	20/07/1955	08/02/1977	08/02/1977
	<i>Entry in force</i>	01/04/1955	01/04/1955	01/04/1955	01/04/1955	01/08/1955	01/08/1955	09/05/1977	09/05/1977
Norway	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953		
	<i>Ratification</i>	09/09/1954	09/09/1954	09/09/1954	09/09/1954	09/09/1954	09/09/1954		
	<i>Entry in force</i>	01/10/1954	01/10/1954	01/10/1954	01/10/1954	01/10/1954	01/10/1954		
Portugal	<i>Signature</i>	27/04/1977	27/04/1977	27/04/1977	27/04/1977	27/04/1977	27/04/1977	24/11/1977	24/11/1977
	<i>Ratification</i>	21/04/1978	21/04/1978	21/04/1978	21/04/1978	04/07/1978	04/07/1978	18/03/1983	18/03/1983
	<i>Entry in force</i>	01/05/1978	01/05/1978	01/05/1978	01/05/1978	01/08/1978	01/08/1978	19/06/1983	19/06/1983
Spain	<i>Signature</i>	09/02/1981	09/02/1981	09/02/1981	09/02/1981	09/02/1981	09/02/1981	12/11/1984	12/11/1984
	<i>Ratification</i>	31/01/1984	31/01/1984	15/01/1987	15/01/1987	21/11/1983	21/11/1983	24/01/1986	24/01/1986
	<i>Entry in force</i>	01/02/1984	01/02/1984	01/02/1987	01/02/1987	01/12/1983	01/12/1983	25/04/1986	25/04/1986
Sweden	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953		
	<i>Ratification</i>	02/09/1955	02/09/1955	02/09/1955	02/09/1955	02/09/1955	02/09/1955		
	<i>Entry in force</i>	01/10/1955	01/10/1955	01/10/1955	01/10/1955	01/10/1955	01/10/1955		
Turkey	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	14/12/1972	14/12/1972
	<i>Ratification</i>	14/04/1967	14/04/1967	14/04/1967	14/04/1967	02/12/1976	02/12/1976	02/12/1976	02/12/1976
	<i>Entry in force</i>	01/05/1967	01/05/1967	01/05/1967	01/05/1967	01/01/1977	01/01/1977	01/03/1977	01/03/1977
United Kingdom	<i>Signature</i>	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953	11/12/1953		
	<i>Ratification</i>	07/09/1954	07/09/1954	07/09/1954	07/09/1954	07/09/1954	07/09/1954		
	<i>Entry in force</i>	01/10/1954	01/10/1954	01/10/1954	01/10/1954	01/10/1954	01/10/1954		

