

European Code of Social Security

Short Guide

Prepared by

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Foreword

The European Code of Social Security, its Protocol and the European Code of Social Security (Revised) are the basic standard-setting instruments of the Council of Europe in the field of social security. Although the Code and the Protocol date back to 1964 they have proved to be valuable tools in defining common European social security standards that can be used for orientation in the reform process going on in many European countries, especially in central and eastern Europe. The underlying idea of these instruments is to promote a social security model based on social justice. The state is deemed to be responsible for establishing and maintaining a stable and financially sound social security system. Those who cannot earn their own living because of sickness, unemployment, old age, employment injury, occupational disease, maternity, invalidity, or death of the breadwinner should be guaranteed a decent standard of living; those who have to look after children should be supported by the society. The European Code of Social Security (Revised), the most recent instrument, dating from 1990, reflects some of the developments in social security philosophy towards the end of the century without abandoning the fundamental concepts laid down in the European Code of Social Security and its Protocol.

These specialised social security instruments form an essential component of the protection of human rights through the Council of Europe. The “right to social security” is enshrined in one of the basic human rights instruments of the Council of Europe, namely in the European Social Charter. States having ratified the revised European Social Charter and having accepted Article 12, paragraph 2, are obliged to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security. Therefore, the promotion of the European Code of Social Security is seen as one of the core tasks of the Council of Europe in order to secure common values in the field of social cohesion in its member countries.

It is worth noting that the standards of the Council of Europe in the field of social security are closely linked to the conventions of the International Labour Organisation (ILO). Convention No. 102 (Social Security Minimum Standards) from 1952 served as a model for the elaboration of the European Code of Social Security. Moreover, the higher standards enshrined in the Protocol to the European Code of Social Security and in the later social security conventions of the ILO also largely coincide. The control of the implementation of the social security standards of the Council of Europe is based on institutional co-operation between the Council of Europe and the ILO. The two organisations work together closely in promoting their standards. The overall aim of this co-operation is to combine the efforts of the two international organisations devoted to the promotion of social justice and to avoid divergences in the interpretation of international social standards.

The present short guide to the European Code of Social Security is meant to provide information about the contents and meaning of the social security standards of the Council of Europe, to explain the ideas lying behind them and to situate them in the context of the different approaches to social security. The aim is to explain the technical and complex provisions in an understandable manner and thus to help promote these important legal instruments and to ensure for them the place they deserve within the standards of the Council of Europe.

We particularly wish to thank Jason Nickless, an expert in the field of social security, for the preparation of this short guide.

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Director General of Social Cohesion

April 2002

Introductory remarks by the author

This short guide aims to provide a comprehensive introduction to the European Code of Social Security (the “Code”), the Protocol to the European Code of Social Security (the “Protocol”) and the European Code of Social Security (Revised) (the “Revised Code”). It is divided into four parts: Parts A to D. Part A introduces each of these instruments, describing their history, aims, structure and how they inter-relate with the other social security instruments of the Council of Europe. Part B is concerned with the rules on the implementation and ratification of the Code, Protocol and Revised Code. Part C describes how a system of national reports is used to monitor compliance with the Code and Protocol; it also explains how this supervision mechanism is amended by the Revised Code. Finally, Part D provides a summary of the minimum standards, first in the Code, then in the Protocol before providing some examples of how these minimum standards have been developed in the Revised Code.

The author would like to thank Angelika Nussberger for her comments and kind assistance in the development of this short guide.

Part A: Presentation and description of the European Code of Social Security

The European Code of Social Security and the Protocol to the European Code of Social Security

History

The origins of the European Code of Social Security can be traced back to the first session of the Consultative Assembly of the Council of Europe held between 10 August and 8 September 1949. The focus of debate during this meeting was how to improve the living standards of those who had survived the destruction and turmoil of the second world war. Social security was highlighted as one of the means by which to ensure an adequate standard of living for the people of Europe.

By 24 August 1950, the Parliamentary Assembly of the Council of Europe had adopted Recommendation 28 (1950) calling for the development of a European Code of Social Security. This recommendation was approved by the Committee of Ministers at its 6th Session on 5 November 1950 and the task of developing a draft for the Code was passed on to the Committee of Experts on Social Security.

Two years later, while the committee of experts was still working on a draft for a European Code of Social Security, the International Labour Organisation (ILO), a specialised agency of the United Nations, produced Convention No. 102 (Social Security Minimum Standards). The mandate of the ILO is to develop fair labour and social security standards both on a regional and worldwide level. Convention No. 102 represents a consolidation and development of various pre-war ILO social insurance conventions in one legal document. This new convention was well received by the Committee of Ministers of the Council of Europe who declared that it should be used as a model for the Code. However, it was apparent that for the Code to have any major impact on social security provision it would have to demand higher standards than those found in ILO Convention No. 102. In 1952, the Committee of Ministers of the Council of Europe asked those preparing the Code to:

“... consider the desirability of drafting a Protocol involving a higher level of social security to which those members that are able to do so may adhere and which will constitute the European level of social security which all members will strive to achieve.”

Thus a Protocol was duly attached to the final draft of the Code, which was adopted by the Committee of Ministers on 11 March 1964. Both the Code and the Protocol were opened for signature on 16 April 1964 and entered into force on 17 March 1968.

What are the European Code of Social Security and the Protocol to the European Code of Social Security?

The Code and its Protocol represent a series of minimum standards. They do not call for the standardisation (or “unification” as it is sometimes called) of the national social security systems. Standardisation would require all the contracting parties to provide the same benefits to the same categories of their population at the same rates and under the same conditions. Instead, the Code and Protocol recognise the desirability of harmonising the social security systems and of establishing minimum requirements that states must satisfy. The aim is to guarantee at least a certain minimum level of social protection. If states wish to provide more than the minimum they are free to do so.

The Code and Protocol also respect the diversity and individuality of the national social security systems. All social security systems are different; they are the product of the distinctive social, political and economic traditions of the states in which they have evolved. The provisions of the Code and Protocol represent goals for every member state of the Council of Europe. They explain what must be achieved but leave every state to determine how it will be achieved. The goals are designed in such a way that they can be applied to all types of social security systems, whether entitlement is based on employment, specific categories of occupations, the whole economically active population or upon residence.

As from 16 April 1964, the member states of the Council of Europe have been able to sign the Code on its own or both the Code and the Protocol together.

The structure of the European Code of Social Security

The European Code of Social Security is divided into fourteen parts that can be broken down into five sections as follows:¹

1. General provisions

Part I of the Code explains the process of ratification. The Code is rather like a menu, states are allowed to pick and choose which parts they will accept and thereby become subject to. The states have nine contingencies (also known as “social risks”) from which to choose. These contingencies are contained in Parts II to X. In order to ratify the Code, each state must select six contingencies; however medical care (Part II) counts as two and old age (Part V) counts as three. Each contingency sets minimum levels of personal coverage, in other words a minimum percentage of workers or residents must be covered for this contingency. Before a state can select a contingency for ratification, it must ensure that the prescribed percentage of its population is covered by social security schemes for that contingency.

2. Contingencies:

Parts II to X define the contingencies and establish the minimum standards thereto. The nine contingencies covered are:

- Medical Care (Part II);
- Sickness Benefit (Part III);
- Unemployment Benefit (Part IV);
- Old-Age Benefit (Part V);
- Employment Injury Benefit (Part VI);
- Family Benefit (Part VII);
- Maternity Benefit (Part VIII);
- Invalidity Benefit (Part IX);
- Survivors’ Benefit (Part X).

It is worthy of note that there is no coverage of the risk of need or poverty as such. Coverage of this risk is typically referred to as “social assistance” whereas the primary focus of the Code is “social insurance”. The distinction between social assistance and social insurance is no longer an easy one to make and this has caused considerable academic and legal debate at national and international level. When the Code was written in the early 1950s, social assistance covered the risk of poverty, was typically financed from general taxation and was considered a discretionary benefit, in other words the state was totally free to decide if and how much benefit should be paid. Social insurance at this time was considered as a subjective right because, *inter alia*, employees had contributed towards its costs, this meant that it had to be paid to any claimant who satisfied the list of set conditions. The Code was designed to cover only social insurance and not social assistance. However, since the 1950s attitudes towards social assistance have changed dramatically, especially since the entry into force of the European Social Charter that now makes entitlement to social assistance a subjective right. Furthermore, means testing has started to play a greater role in relation to schemes that have traditionally been considered social insurance.

The Code does cover schemes that base entitlement to a benefit upon a means test provided that the claimant’s need is somehow linked to one of the contingencies listed above, for example the claimant is facing poverty because of unemployment or old age. The Code does not cover schemes that are only concerned with whether a person is poor and thus unconcerned whether the poverty stems from one of the recognised social contingencies.

As can be seen from the list above, each contingency is given its own part in the Code and each of these parts contains minimum standards relating to the following:

- Material scope: describing the range of contingencies that must be covered;
- Personal scope: defining the categories of individuals covered and the minimum percentages of these categories that must be protected;
- Conditions for entitlement to benefits: setting limits on the conditions imposed upon applicants before the benefit is paid. The restrictions placed upon conditions of entitlement may be rather vague such as the requirement in Part IV on unemployment that permits “... such qualifying period as may be considered necessary to preclude abuse”. Other restrictions are more precise, such as those in Part V on old age which prescribe maximum qualifying periods in respect of entitlement to an old age pension, for example a maximum of thirty years of employment or twenty years of residence for entitlement to a pension at the level required by the Code;
- The type of benefit: benefits may take a number of forms. They may be periodic or lump-sum benefits, periodic benefits are paid regularly whereas lump-sum benefits are one-off payments. The Code deals

¹ This information provides only a basic introduction; greater individual attention will be paid to each of these sections in the remainder of this guide.

principally with periodic payments. Benefits may also be divided into cash benefits and benefits in-kind. Cash benefits, as their name suggests, are those that involve the payment of money. Benefits in-kind involve the actual provision of goods and services by the social security system. Most of the provisions within the Code relate to cash benefits but some parts do take into consideration benefits in-kind, such as that on family benefits (Part VII) which refers to ‘the provision to or in respect of children of food, clothing, housing, holidays or domestic help’;²

- The calculation method used for periodic cash benefits: the Code envisages three ways in which periodic cash benefits may be calculated: earnings-related benefits, flat-rate benefits and means tested benefits. Earnings-related benefits reflect the income from work or similar economic activity that the recipient used to receive before they fell victim to one of the contingencies. Earnings-related benefits are usually based on the average earnings of the claimant over a prescribed period; these average earnings are often referred to as the ‘‘calculation basis’’. The earnings-related benefit itself is then paid as a set percentage of the calculation basis. When a flat-rate benefit is used all recipients receive exactly the same amount of benefit, the amount of benefit is not affected by the previous earnings of the recipient. Finally, means tested benefits are only paid to those who have income (and in some cases assets as well) below a prescribed level. These three methods of benefit calculation are described in detail in Articles 65, 66 and 67 of the Code. The parts of the Code that relate to the individual contingencies usually just refer to Articles 65, 66 or 67 of the Code when establishing the calculation methods available for the periodic benefits they cover;
- The period of entitlement to benefit: some states choose to restrict the duration for which periodic benefits are provided. The Code sets periods below which the maximum duration of benefit provided by the contracting party may not fall. The limits established by the Code on the maximum duration of benefit payments varies from contingency to contingency, in most cases it is set as a fixed number of weeks whereas in others the duration is more vague. For instance old age benefit must be granted ‘‘throughout the contingency’’,³ given that the contingency covered by the part of the Code on old age is ‘‘survival beyond a prescribed age’’⁴ this means that the benefit must be paid until the death of the recipient;
- The waiting period: in some states benefits are not paid immediately upon the occurrence of a contingency, in other words the claimant must wait for a fixed period after the commencement of their unemployment, sickness, etc., before they are paid any social security benefit. Certain parts of the Code establish maximum waiting periods such as that on unemployment which declares that claimants may be unemployed for up to seven days before they receive any benefit.⁵

3. Calculation of periodical payments

Part XI describes three methods by which periodic cash benefits may be evaluated and the minimum amounts that these benefits must provide. The Code aims to set equivalent standards for each type of social security system and does this by giving contracting parties a choice of three models by which benefits levels may be assessed. The models are so designed as to provide standards that are roughly equal. Part XI of the Code can be applied to states that operate social security through periodic benefits that are either earnings-related, flat-rate or means tested.

The minimum amounts of benefit are based on the concept of a standard beneficiary. The definition of a standard beneficiary varies from one contingency to another. For sickness, unemployment, employment injury and invalidity it is a man with a wife and two children. For old age, it is a man with a wife of pensionable age. For survivors, it is a widow with two children. For maternity, it is a woman carrying a child. At the time of the creation of the Code the standard beneficiary was defined on the basis of the typical family model. The Code focuses upon a family model because during the 1950s most women and children were not individually entitled to social security but derived their entitlement from the family breadwinner. Thus old age pension, unemployment benefit, invalidity pension, etc., was often increased by supplements for dependent wives and children. In order to assess and compare the real level of benefits these supplements had to be taken into consideration. However, today, family structures have changed considerably, especially the number of people living on their own. These developments in family structure have been taken into account in the Revised Code (described below).

As well as respecting the different models for organising benefits, the Code also has to respect the standard of living that varies considerably from one state to another. For this reason, the Code could not specify a minimum amount of benefit in terms of euros or dollars but had to establish evaluation tools that were relative to the standard of living. The amount of benefit for the standard beneficiary is therefore evaluated using one of the three evaluation models. The models effectively establish benchmarks against which to compare the level of benefit. These benchmarks may be based on the previous earnings of the claimant, the wage of a skilled male manual employee, the average earnings within the territory of the

² Article 42 of the Code.

³ Article 30 of the Code.

⁴ Article 25 of the Code.

⁵ Article 24, paragraph 3, of the Code.

contracting state, etc. The benefits received by the standard beneficiary must be equal to or above a percentage of one of these benchmarks. These percentages are set down by the Code in a schedule to Part XI and vary from one contingency to another.

The reason why the Code provides for different types of periodic cash benefit and different types of benchmarks is to ensure that it does not favour one model of social security over another. These different typologies respect the individuality of national social security systems and ensure that every national system is obliged to comply with minimum standards of the same level.

4. Common provisions

Part XII contains the following minimum standards that are shared by all of the contingencies covered in Parts II to X:

- The grounds on which a benefit may be suspended (Article 68): this article describes the only circumstances in which the payment of a social security benefit may be temporarily, and in some cases permanently, stopped. These include periods during which the benefit recipient leaves the country of payment, where the contingency occurred as a result of wilful misconduct by the claimant or where the recipient obtained the benefit fraudulently by providing information that was untrue;
- The arrangements for the right of appeal (Article 69): this article sets minimum standards concerning a person's right to appeal the refusal of a social security benefit, the quantity (amount) of a benefit or the quality of a benefit (in relation to benefits in-kind);
- The financing of social security (Article 70): this article ensures that the financing of social security does not cause hardship to the people. It declares that social security should be collectively financed, in other words that it should be financed through a system of solidarity whereby people are concerned with financing for the greater good rather than their own individual needs. It also ensures that workers in systems where social security is financed by contributions from employers and employees are not forced to bear an unfair proportion of the burden;
- The administration of social security (Article 71): this article makes the contracting party ultimately responsible for the administration of social security in its state. It also prescribes a minimum administrative role for the representatives of the people covered by social security schemes.

5. Miscellaneous provisions

Part XIII concerns the application of the Code and deals with the following:

- Temporal scope of application of the Code (Article 72): this article explains that the Code does not apply to contingencies realised before its coming into force for the relevant party concerned or to benefits paid with respect to contingencies occurring after this point if the right to that benefit was acquired during periods preceding this date;
- The monitoring procedure (Articles 73 to 76): these articles establish a system of national reporting by which the Council of Europe may supervise the implementation of the Code. It also provides for the production of reports on the contingencies that have not been accepted by the states.

Part XIV deals with the ratification procedure, the accession of non-member states of the Council of Europe and the denunciation of the Code by any party subject to it.

The structure of the Protocol to the European Code of Social Security

The Protocol to the Code increases the minimum standards provided for within the Code itself and contains four sections, these are:

- **Section I** this describes the amendments made to the wording of the Code by the Protocol. The Protocol goes through the Code from start to finish describing which part of the Code is to be changed and the new text that shall replace it. Of course, it should be noted that not all the articles of the Code are amended, some are left intact by the Protocol. The amendments made increase the minimum standards in a number of ways. They alter definitions in order to increase the range of people protected: for example, the definition of "child" in the Code covers either a person under school-leaving age or a person under 15 years of age, the choice of which is left to the state. The Protocol defines "child" as either:
 - a. a person under 16 years of age; or

- b. a person under 15 years or school-leaving age (as prescribed by the state) provided that people who are continuing their education, have engaged in an apprenticeship or are invalids are still classified as children until the age of 18 years.

The set minimum levels of coverage are also increased. For example, the part on invalidity (Part IX) of the Code declares that every state which covers prescribed classes of employees should cover at least 50% of all employees, whereas the Protocol increases this to 80%. The minimum standards contained in the Code are further increased by reducing qualifying periods, extending the duration of benefits and shortening waiting periods. What is more, the Protocol increases the minimum amounts of benefit prescribed in the Code by adding a new schedule to the part on the calculation of periodic benefit (Part XI). For example, the new schedule increases the minimum percentage of benefits for unemployment from 45% to 50%;

- **Section II:** this declares that no state can sign, ratify or accede to the Protocol unless it also signs, ratifies or accedes to the Code;
- **Sections III and IV:** these explain when and how the Protocol shall enter into force.

The European Code of Social Security (Revised)

History

Both the Code and its Protocol came into force on 17 March 1968. However, by its 41st meeting in December 1973, the Committee of Experts on Social Security came to the conclusion that the Code was becoming outdated in view of the trends and developments in both national and international social security law. The committee of experts suggested that the Committee of Ministers of the Council of Europe should sanction the revision of the Code. The Committee of Ministers responded by asking the committee of experts to more precisely define their proposal. Many years of research and intra-organisational co-operation, which included comments from the Council of Europe Parliamentary Assembly, led to the production of a draft Revised Code that was placed before the Ministers' Deputies at their 422nd meeting on 6 November 1990. This draft was approved at that meeting and opened for signature on the same day. The Revised Code requires ratification by at least two states before it comes into force and until now (May 2002) no state has actually ratified its provisions.

What is the European Code of Social Security (Revised)?

The Revised Code satisfies three basic goals. The first is the development of higher minimum standards than those advocated in the Code and its Protocol. The second is the introduction of greater flexibility. The third is to promote a neutral approach in gender issues. In fulfilling these objectives, the Revised Code reflects some of the developments in social security philosophy over the twenty-two years between the entry into force of the Code and the finalisation of the Revised Code.

The minimum standards of the Code were increased by the Revised Code in a number of ways. The minimum levels of personal scope were increased, for instance the provisions relating to sickness benefit in the Code required the following minimum coverage:

- For those systems that protected prescribed classes of employees: 50% of all employees; or
- For those systems that protected prescribed classes of the economically active population: 20% of all residents; or
- All those residents whose means fall below the set level defined in Part XI, Article 67, of the Code.⁶

The Revised Code extended these minimum levels as follows:

- All employees, including apprentices; or
- Prescribed classes of the economically active population amounting to at least 80% of that population.⁷

The Revised Code adds a proviso that, in spite of the first bullet point, allows the exclusion of certain classes of employees amounting to no more than 10% of all employees. This means that states that prescribe coverage in terms of classes of employees (providing separate schemes for miners, metal workers, shipbuilders, retailers, etc.) are able to exclude specific groups of workers as long as no more than 10% of all employees are excluded in total.

The Revised Code further increased the minimum standards by raising the minimum amounts of benefit and increasing the duration of payment of some benefits. The increased minimum amounts may be found in the schedule to Part IX, for example the minimum percentage applied for unemployment paid to a person with a spouse and two children is increased by the Revised Code to 65% compared with 45% in the Code and 50% in the Protocol. An example of increased duration of payment may be taken from Part II on medical care where the maximum duration of twenty-six weeks applied in the Code is removed entirely by the Revised Code. Under the Revised Code, treatment must continue until the contingency is over, namely until the patient recovers or dies.

The second aim of the revision of the Code was increased flexibility. The Code had to be amended so that states could adapt their social security systems in order to overcome some of the financial and demographic challenges they were all facing. For instance, the Revised Code made extensive alterations in the area of old age benefits in order to alleviate some of the problems faced by the rapid ageing of the population. The problems caused by the ageing population mainly stem from the fact that pension schemes are financed on a pay-as-you-go basis; this means that the economically active population pays for the benefits of the economically inactive population. As average life expectancy has increased considerably over the last two decades this means that a larger portion of society is economically inactive. This growing

⁶ Article 15 of the Code.

⁷ Article 14, paragraph 1, of the Revised Code.

number of inactive persons places more pressure on the decreasing portion of economically active individuals who are expected to finance pensions. The amendments made by the Revised Code in order to help redress this problem include express recognition of the deferment of old age pension, which enables those over pensionable age to continue working in return for a higher pension when they eventually do retire.⁸ This means that the deferring pensioner delays his/her claim for a pension and continues to make contributions to the social insurance system. The Revised Code also provides for part-time pensions whereby people receive a reduced pension whilst simultaneously working on a part-time basis. This reduces the burden on the pension financing system, results in continued social security contributions paid by the worker or their employer and enables the part-time pensioner to train the staff that will ultimately replace them.

The Revised Code also provides for increased flexibility in order to better reflect the reality of social security provision in many of the member states of the Council of Europe. For instance, not all states operate a separate system of protection for those injuries and diseases caused by employment. These states have the same schemes for medical care, sickness benefits, invalidity benefits and survivors' benefits regardless of whether the injury or disease is work or non-work related. The Revised Code accepts this reality and provides that when these states accede to the parts on medical care, sickness benefits, invalidity and survivors' benefit they shall be automatically deemed to also comply with the provisions in the part concerning employment injuries provided that those suffering from work-related incapacity are not obliged to fulfil any qualification conditions.⁹ A special system for survivors' benefits is not necessary if benefits in the case of old age and invalidity as well as family benefits are granted.¹⁰

This movement towards increased flexibility is further testimony to the overall goal of respecting the individuality of each national social security system.

The changes in the Revised Code also reflect the new approach to the question of equal treatment of men and women. An express commitment to equal treatment was included in Article 3, paragraph 6, of the Revised Code, which states:

“Each party shall endeavour to take appropriate measures to ensure equal treatment for protected persons of both sexes in the application of those parts of the present (Revised) Code whose obligations it has accepted.”

This movement towards equal treatment led to amendments within the substance of the Code as well, including the revision of the concept of the standard beneficiary used for the purpose of assessing the amount of benefit. For instance, in the Code the standard beneficiary for the purposes of assessing unemployment benefit is a man, his wife and two children. In the Revised Code, the standard beneficiary is either a person on their own or a person, their spouse and two children. This change effectively removes the stereotypical view of women as homemakers which was effectively codified under the old system. It also reflects the changes that have taken place with regard to family structure and the growing tendency for people to live alone. The aim of gender equality has led to other changes throughout the Code, including a redefinition of the term “qualifying period”.¹¹ The Revised Code makes express mention of periods treated as equivalent to periods of employment or economic activity. This was done in recognition of the trend in many states to credit qualifying periods to those who have interrupted their career in order to pursue non-economic activities such as child raising or caring for elderly relatives. Given that these non-economic activities are typically performed by women it is generally believed that by crediting them in this fashion women are given due acknowledgement for their role in society. The Revised Code recognises this development and encourages it.

The structure of the European Code of Social Security (Revised)

The first point to note is that unlike its predecessor the Revised Code is contained in one document, there is no Protocol providing for higher minimum standards. The structure of the Revised Code is almost the same as that of the Code. The principle difference is that the Revised Code contains fifteen instead of thirteen parts. These fifteen parts can be broken down in five sections as follows:

1. General provisions

Part I contains definitions and describes the ratification process. Ratification varies depending upon whether the state has or has not ratified either sub-paragraphs 1 to 3 of Article 12 of the European Social Charter or the Code. If a state has ratified the relevant provisions of the European Social Charter or the Code then it only has to select one of the contingencies described below.¹² If a state has not ratified either of these instruments then it must select at least three of the

⁸ Article 27, paragraph 2, sub-paragraph b, of the Revised Code.

⁹ Article 3, paragraph 3, of the Revised Code.

¹⁰ Article 3, paragraph 4, of the Revised Code.

¹¹ Article 1, paragraph e, of the Revised Code.

¹² Article 2, paragraph 1, of the Revised Code.

contingencies described below.¹³

2. Contingencies

In Parts II to X, the Revised Code, just like the Code, isolates nine contingencies allowing each state to select the social risks to which it intends to accede. As with the Code, the nine contingencies are as follows (unlike the Code all the contingencies in the Revised Code are given equal weight):

- Medical Care (Part II);
- Sickness Benefit (Part III);
- Unemployment Benefit (Part IV);
- Old Age Benefit (Part V);
- Employment Injury Benefit (Part VI);
- Family Benefit (Part VII);
- Maternity Benefit (Part VIII);
- Invalidity Benefit (Part IX);
- Survivors' Benefit (Part X).

Each of the contingencies contained in the Revised Code establishes minimum standards in the same way as the Code, covering the following issues:

- Material scope;
- Personal scope;
- Conditions for entitlement to benefits;
- Type of benefit;
- Calculation method used for periodic cash benefits;

- Period of entitlement to benefit;
- Waiting period.

3. Calculation of periodical payments

In Part XI the Revised Code sets minimum levels for the amount of periodic benefits. The level of benefits may be compared to one of a number of factors including the previous earnings of the recipient or the wages of a skilled manual worker. It is no longer based on the typical family model, but either on a beneficiary considered alone or on a beneficiary with dependants.

This part of the Revised Code also provides guidance on how to deal with benefits that are subject to taxation or social security contributions,¹⁴ which is something that did not appear in the Code.

4. Common provisions

Part XII concerns the situations in which benefits may be suspended and the individual's right to appeal decisions relating to the quantity or quality of benefits. It also deals with obligations relating to financing and administration. In both cases there are no significant differences between the terms of the Revised Code and that of the Code.

5. Miscellaneous provisions:

Part XIII deals with the supervision mechanism and introduces some changes to the supervision procedure.

Part XIV provides a mechanism by which the provisions of the Revised Code may be amended without having to draft an entirely new Code. Comparable regulations are not contained in the Code. The motivation behind this is to allow the Code to develop with the social security systems of the member states. It provides the flexibility needed to face the challenges of today, such as the ageing population and increased costs of medical care as well as the challenges of tomorrow, whatever they may be.

Part XV contains final provisions regarding the ratification procedure, the accession of non-member states of the Council of Europe and the denunciation of the Code by any party subject to it.

¹³ Article 2, paragraph 2, of the Revised Code.

¹⁴ Article 71, paragraph 5, of the Revised Code.

The European Code of Social Security and other instruments of the Council of Europe

Harmonisation versus co-ordination

The instruments of the Council of Europe relating to social security may be classified as either harmonising instruments or co-ordinating ones. It is therefore important to distinguish these two types of legal measure.

Harmonising instruments in this field require states to alter the substance of their social security systems. They may have to change the amount of benefit or length of the qualifying period. There are different degrees of harmonisation. These range from standardisation where all systems must adopt the same standards, nothing better and nothing worse, to minimum harmonisation, achieved through setting minimum standards and leaving the states free to provide better provisions if they so wish. The following Council of Europe instruments are concerned with the harmonisation of social security:¹⁵

- The European Code of Social Security and its Protocol;
- The European Code of Social Security (Revised);
- The European Social Charter and its Protocols;
- The revised European Social Charter.

All of these instruments work on the basis of minimum harmonisation, providing minimum standards and permitting (even encouraging) the contracting parties to exceed these standards.

Co-ordination of social security is concerned with migrants, people who move to another country in order to live or work there. Co-ordination provisions ensure that migrants are treated fairly. They also 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. Co-ordination provisions do not oblige states to directly alter the substance of their social security laws. The amount of benefit, duration of payment and qualification periods all remain the same. Instruments of co-ordination only really affect the situation of migrants, for example by obliging states not to treat migrants differently from nationals. The following Council of Europe instruments are intended to co-ordinate the provision of social security:¹⁶

- The European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors;
- The European Interim Agreement on Social Security Schemes other than Schemes for Old Age, Invalidity and Survivors;
- The European Convention on Social and Medical Assistance;
- The European Convention on Social Security and its Protocol.

This section of the short guide shall begin by introducing the harmonisation instruments of the Council of Europe before briefly examining its co-ordination measures.

The harmonising instruments of the Council of Europe

Besides the Code, Protocol and Revised Code, the remaining harmonising measures of the Council of Europe are the European Social Charter and the revised European Social Charter.

The European Social Charter: this instrument entered into force in 1965. Unlike the Code, Protocol or Revised Code, the Social Charter does not deal exclusively with social security. The Social Charter is intended to act as the social counterpart to the European Convention on Human Rights. It protects a wide range of social and economic rights including the right to work, the right to fair remuneration, the right to bargain collectively and the right to vocational training. It also establishes rights to protect specific groups of the population such as those with disabilities, children, pregnant women and migrants. As with the Code, the Social Charter is also a “menu instrument” whereby the contracting parties may select a minimum number of rights to protect. The following provisions of the Social Charter relate to social protection:

- Article 8: the right of employed women to protection of maternity
- Article 11: the right to protection of health;

¹⁵ Readers may note that there is also a harmonisation instrument designed for application to farmers known as the European Convention on the Social Protection of Farmers (1974). However, this will not be dealt with in this short guide.

¹⁶ Readers may note that the European Convention on the Legal Status of Migrant Workers (1977) contains general provisions relating to the equal treatment of migrant workers and their families as well as protection of their acquired rights.

- Article 12: the right to social security;
- Article 13: the right to social and medical assistance;
- Article 14: the right to benefit from social welfare services
- Article 16: the right of the family to social, legal and economic protection.

In order to ratify the Social Charter a state must sign at least ten articles.¹⁷ At least five of these articles must come from the hard core articles. The hard core articles include those on the right to social security and the right to social and medical assistance.

As with the Code, the Social Charter is supervised on the basis of national reports. One important difference to the Code, however, is that a complaints procedure has been established under the Social Charter. This procedure was introduced through a protocol and only applies to those states that have acceded to this instrument. It allows international organisations, national non-governmental organisations and the social partners to complain about violations of the Social Charter.

The minimum standards for social security contained within the Social Charter are indirectly linked to the standards defined by the Code. In article 12, the right to social security, the Social Charter obliges contracting parties to establish a social security system, to maintain and improve that system as well as ensuring the equal treatment of the nationals of other contracting parties. Article 12 obliges states to maintain a system that is at least equivalent to that prescribed in ILO Convention No. 102 – a direct reference to the Code was not possible at the time the Social Charter was drafted (1961) as the work on the Code was only finished in 1964. But any state which ratifies the Social Charter, and in doing so accepts Article 12 paragraph 2 must implement the standards of convention No. 102 of the ILO, which largely coincide with those set by the Code.

The Revised European Social Charter: this instrument entered into force in 1999. It amends some of the existing rights contained in the European Social Charter and adds a series of new rights, including the right of elderly persons to social protection, the right to protection in the case of termination of employment, the right to housing, the right dignity at work and the right to protection against poverty and social exclusion. The aim of the Revised Charter is to secure higher standards as well as develop a global policy against problems such as poverty. Article 12 of the Revised Social Charter does not refer to Convention No. 102 of the ILO, but to the European Code of Social Security instead.

The co-ordinating instruments of the Council of Europe

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 the 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 (their “home state”) moves to the territory of another contracting party (the “host state”) they 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 only under certain conditions. For example, in order to receive an invalidity pension in a host state where such pensions are non-contributory, the claimant must have:

- Entered the host state before the first medical certification of their invalidity;
- Resided in that state for at least fifteen years after having reached the age of twenty; and
- Spent the five years immediately before the claim living in the host state without interruption.

The interim agreement further provides that nationals of a contracting party living in the territory of another contracting party should be treated as nationals of the latter in relation to any bilateral agreements concluded between the latter and any other contracting parties. For example, a national of a contracting party leaves their home state, State A, and moves to another contracting party, State B. State B has signed a bilateral social security co-ordination agreement with another contracting party, State C. For the purpose of the agreement between B and C, the migrant is treated as if they are a national of State B 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

¹⁷ Alternatively, forty-five numbered paragraphs. See Article 20 of the Social Charter.

Agreement on Social Security relating to Old Age, Invalidity and Survivors to schemes relating to sickness, maternity, medical benefits (provided they are not subject to a means test), death grants, employment injuries and family allowances. The general coverage and structure of the Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors follow the Interim Agreement on Social Security relating to Old Age, Invalidity and Survivors. 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 sick pay) but not long-term ones (like old age pensions).

The European Convention on Social and Medical Assistance: this instrument entered into force in 1954. It essentially fills in the gaps left by the two interim agreements described above. It covers those schemes where entitlement to the benefit 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 in need of financial or medical social assistance can be repatriated. It 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 following principles as well:

- The application of only one set of legislation: this principle ensures that only one set of national rules are applied to a migrant at any one time. This provides for legal certainty in a range of complicated situations, for example where a migrant lives in one contracting party but resides in another. In this situation, the European convention provides that the state of employment will be responsible for all of the migrants social security coverage;
- The aggregation of insurance periods: this principle allows a migrant worker to add together all of the insurance periods they have acquired in the contracting parties in order to determine the entitlement to or the amount of a benefit. For example, a migrant works and pays social insurance in their home state, State A, for ten years before moving and working in State B for ten years. They decide to stay in State B after retiring and claim their pension there. State B provides a full pension after twenty years of insurance. The migrant worker is allowed to aggregate their periods of insurance in States A and B in order to claim a full pension in State B;
- The exportation of benefits: this principle declares that certain long-term benefits should be payable abroad. For example, a migrant earns a pension in their host state and, having retired, decides that they want to return to their home state to live with their family. The principle of exportation of benefits declares that the host state should continue to pay the pension to the migrant when that migrant returns home.

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;
- Employment injury/disease benefits;
- Death grants;
- Unemployment benefits;
- Family benefits.

The wider ranging European convention is thus intended to replace the interim agreements by developing a more comprehensive co-ordination mechanism.

The Protocol of the European Convention on Social Security: this instrument 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.

Part B: States' implementation of the European Code of Social Security

Signature, ratification and entry into force

The European Code of Social Security

The Code was opened for signature on 16 April 1964 and entered into force on 17 March 1968, one year after the deposit of the third instrument of ratification.

Member states of the Council of Europe can ratify the Code by depositing an instrument of ratification with the Secretary General. This means that they accept the provisions of the Code as binding in accordance with the rules of international law.

The conditions of ratification are contained in Article 2 of the Code. The Code acts very much like a menu, each state is allowed to select the contingencies to which the Code will be applied in their country. The contingencies are described in Parts II to X of the Code as follows:

- Medical Care (Part II);
- Sickness Benefit (Part III);
- Unemployment Benefit (Part IV);
- Old Age Benefit (Part V);
- Employment Injury Benefit (Part VI);
- Family Benefit (Part VII);
- Maternity Benefit (Part VIII);
- Invalidity Benefit (Part IX);
- Survivors' Benefit (Part X).

The basic approach to ratification is contained in Article 2, paragraph 1, and involves each state selecting six of these risks, bearing in mind that medical care counts for two and old age benefit counts for three. This means for instance that a state could fulfil the minimum ratification conditions by adopting the parts on medical care, old age and any one of the other risks. Once each state selects the risks to which it shall commit itself, it must also adopt the general provisions (Part I), the miscellaneous provisions (Part XIII) and the relevant provisions of the parts concerning the standards to be complied with by periodical payments (Part XI) and the common provisions (Part XII). States are of course free to adopt more than the minimum number of risks. Several states have decided to comply with all of the risks contained within the Code, such as Belgium, Germany, Luxembourg and the Netherlands.

Moreover as well as the basic approach in Article 2, paragraph 1, there is an alternative ratification procedure contained in Article 2, paragraph 2. The alternative procedure only requires the adoption of the minimum standards for three risks provided that at least one of the following risks is adopted:

- Unemployment Benefit (Part IV);
- Old Age Benefit (Part V);
- Employment Injury Benefit (Part VI);
- Invalidity Benefit (Part IX);
- Survivors' Benefit (Part X).

However, in order to benefit from the alternative procedure the state must prove that its system is equivalent to one of the combination of contingencies provided for in the general ratification procedure (namely, six risks with medical care counting for two and old age for three) as well as either:

- Providing evidence that the level of protection provided by the three risks they select according to the alternative procedure exceed the standards of the Code as regards the number of people covered or the amount of benefit provided; or
- Prove that the standard of protection for the risks covered are higher than those provided for in the Code because the supplementary services listed in Addendum 2 are fully complied with. Addendum 2 sets out a number of additional minimum standards which establish longer minimum periods for the payment of benefits, higher amounts of benefits, a wider range of medical care and even introduces the obligation to pay a lump-sum funeral benefit upon the death of an insured person. As well as providing evidence about

compliance with the supplementary services contained in Addendum2, the state must also provide information on the branches of social security that do not currently attain the standards of the Code.

States wishing to take advantage of the alternative ratification procedure need permission from the Council of Europe before their ratification is accepted. They therefore have to provide reports containing the information above as well as the statistical information referred to in Article 78 of the Code, indicating the extent of personal coverage, amount of benefit, etc. These reports are sent to the Secretary General of the Council of Europe, who in turn passes them on to the Committee of Experts on Social Security. The committee of experts prepares a report for the Committee of Ministers which in turn decides, on the basis of a two-thirds majority, if the state complies with the requirements for alternative ratification laid down by the Code. If compliance is established then the state will be deemed to have ratified the Code, if not then the Committee of Ministers may make a resolution recommending what may be done in order to secure compliance with the alternative ratification procedure. Thus one of the most significant differences between the normal procedure and the alternative procedure is that the alternative procedure requires the approval of the Committee of Ministers before the provisions of the Code take effect; whereas under the normal procedure the Code becomes effective simply upon the deposit of an instrument of ratification.

The idea behind the alternative ratification procedure is to offer a possibility of ratification to those countries whose systems of social security are highly developed in some branches (although not necessarily in the core branches of old age and medical care) but less developed in others. However, it is still important that the social security systems in all of the states bound by the Code are comparable. Otherwise, the harmonisation goals of the Code would not be achieved.

The Protocol to the European Code of Social Security

The Protocol was opened for signature on 16 April 1964 and entered into force on 17 March 1968, that is at the same time as the Code.

Whereas it is possible to ratify only the Code, but not the Protocol, the ratification of the Protocol alone is not possible (Section II of the Protocol).

The Protocol amends the ratification conditions applied in Article 2 of the Code. The requirements for general ratification are increased to a minimum of eight risks (with the risks of medical care counting for two and the risk of old age counting for three). The conditions for the alternative procedure demand the selection of six risks, without any weighting system applied.

The European Code of Social Security (Revised)

The Revised Code was opened for signature on 6 November 1990. It requires ratification by at least two states and will enter into force on the first day of the month which follows the expiry of a twelve-month period after the date on which the instrument of ratification, acceptance or approval is deposited with the Secretary General.¹⁸ To date, the Revised Code has not been ratified by any of the member states of the Council of Europe (May 2002). Thus, it has not yet entered into force.

The conditions of ratification of the Revised Code depend upon whether the acceding state has accepted either paragraphs 1 to 3 of Article 12 of the European Social Charter or the Code. If a state has accepted either of these provisions then it may ratify the Revised Code by selecting just one risk from Parts II to X (the same risks provided for under the Code) as well as the general provisions (Part I), the miscellaneous provisions (Part XIII) and the relevant provisions of the parts concerning the standards to be complied with by periodical payments (Part XI) and the common provisions (Part XII).¹⁹ If a state has adopted neither the relevant paragraphs of Article 12 of the European Social Charter nor the Code it must select at least three of the risks listed in Parts II to X and there is no weighting system so all of the risks are of equal value.²⁰

The ratification process for the Revised Code is more flexible than that of the Code, recognising to an even greater degree the considerable diversity that exists between national social security systems. For example, some states do not distinguish between injuries or diseases caused at work and those caused outside of work, these states therefore operate no special employment injury/occupational disease scheme. If someone is killed or rendered temporarily or permanently incapacitated by an employment injury, they receive the same benefits as someone who was injured by an accident in their home. The Revised Code accepts that this is possible and declares that those systems which cover the risks on medical care, sickness benefits, invalidity benefit and survivor's benefits irrespective of whether the origin of these risks is work or non-work related shall be deemed to also comply with the part on employment injuries, but only if the victims of

¹⁸ Article 84 of the Revised Code.

¹⁹ Article 2, paragraph 1, of the Revised Code.

²⁰ Article 2, paragraph 2, of the Revised Code.

employment injuries are not required to fulfil any minimum qualifying periods.²¹ States which have schemes for old age and invalidity as well as for family benefits that encompass the economically active population may be considered as fulfilling the provisions concerning survivors' benefits provided that the schemes for old age and invalidity cover the entire economically active population and that the scheme on family protects the children of all economically active persons.²²

²¹ Article 3, paragraph 3, of the Revised Code.

²² Article 3, paragraph 4, of the Revised Code.

Declarations

Both the Code and the Revised Code offer contracting parties the option of restricting the application of their provisions. This restriction takes the form of an official declaration made by the contracting party to the Council of Europe.

The European Code of Social Security

Article 80 of the Code describes the geographical scope of application declaring that the Code applies to the “metropolitan territory” of each contracting party. Each contracting party is free to define the range of the territory which will be covered by the Code.

The European Code of Social Security (Revised)

The Revised Code is more flexible than the Code and has increased the range of potential declarations available to the contracting parties. Declarations in the Revised Code fall into three groups: those that can be made automatically without the consent of the Committee of Ministers of the Council of Europe, those that can only be made with the approval of the Committee of Ministers and those relating to civil servants.

1. Declarations that do not require any consent from the Committee of Ministers: the Revised Code contains a number of potential derogations that can be made simply by sending a declaration to the Secretary General of the Council of Europe. The scope of these derogations is strictly confined by provisions within the Revised Code. For example, Part III on Sickness Benefits declares in Article 17, paragraph 1, that the maximum waiting period for the payment of sickness benefits is three days, whereas Article 17, paragraph 2, allows states to derogate from this as regards self-employed persons. These potential, though carefully confined, derogations can be found in the following parts of the Revised Code:

- Part II: Medical Care;²³
- Part III: Sickness Benefit;²⁴
- Part V: Old Age Benefit;²⁵
- Part VIII: Maternity Benefit;²⁶
- Part X: Survivors' Benefit.²⁷

The derogations relate to such things as personal scope, duration of qualifying period and the extent of the rules on the equal treatment of men and women. Each derogation is either carefully confined in its scope, for example restricting its application to self-employed persons, or it sets out a series of conditions that ensure that the contracting party continues to provide social protection of a high standard.²⁸

2. Declarations that require the consent of the Committee of Ministers: if a contracting party wishes to derogate from any other provision of the Revised Code it can do so by making a declaration which is in turn approved by at least a two-thirds majority of the Committee of Ministers. The Committee of Ministers will only approve the declaration if it is convinced that the contracting party provides protection that is at least equivalent to that from which the contracting party intends to derogate.²⁹
3. Civil servants: the contracting states are free to exclude civil servants from the personal scope of the Revised Code if two requirements are fulfilled. Firstly, the excluded civil servants are covered by special schemes that provide protection that is at least equivalent to that stipulated in the minimum standards of the Revised Code. Secondly, the declaration must be made upon ratification of the Revised Code and deposited with the instrument of ratification. That means that civil servants can only be excluded when the Revised Code is first adopted and not afterwards.³⁰

²³ Article 9, paragraphs 1, 2 and 3, of the Revised Code.

²⁴ Article 17, paragraph 1, of the Revised Code.

²⁵ Articles 27, paragraph 1, and 29, paragraph 2, of the Revised Code.

²⁶ Article 52, paragraphs 1, 2 and 3, of the Revised Code.

²⁷ Article 70 of the Revised Code.

²⁸ A list of all the potential derogations and the restrictions attached thereto may be found in Article 7, paragraph 1, of the Revised Code.

²⁹ Article 7, paragraph 2, of the Revised Code.

³⁰ Article 7, paragraph 3, of the Revised Code.

Denunciation

The Code, Protocol and Revised Code all contain provisions that allow the contracting parties to denounce one or more of the parts to which they have committed themselves. The states are therefore free to exit all or part of the Code, Protocol or Revised Code in accordance with the conditions contained therein.

The European Code of Social Security

Article 81 of the Code allows contracting parties to denounce one or more of Parts II to X (containing the minimum standards) provided that this is done at the end of a period of five years after the Code entered into force in that state or at the end of any successive period of five years thereafter. This means that the Code can only be denounced at the end of five, ten, fifteen, twenty, etc. years after its entry into force. Furthermore, any contracting party intending to denounce all or part of the minimum standards contained within the Code must give one full year's notice.

The Protocol to the European Code of Social Security

The Protocol changes the wording of Article 81 of the Code so as to allow the contracting parties to denounce the provisions of the Protocol. This means that the states are free to denounce all or part of the Protocol but still leave the Code itself intact. The procedure and time-limits for the denunciation of the Protocol are the same as those provided for by the Code.

The European Code on Social Security (Revised)

The denunciation clause in the Revised Code is to be found in Article 88, which allows the contracting parties to denounce the Revised Code or any of Parts II to X thereof at the end of four years after its entry into force in the contracting party concerned. The Revised Code can then be denounced at the end of every successive fifth year after that initial four-year period. As with the Code, denunciation of the Revised Code requires a full twelve months' notice.

Part C: The supervision procedure

Supervision on the basis of national reports

The effectiveness of international legal acts largely depends on the effectiveness of the supervision procedure. Therefore, the Code, the Protocol and the Revised Code establish a control system based on national reporting at regular intervals. So, even though violations of these instruments are not confirmed and sanctioned by an international court such as the European Court of Human Rights, there is a tight control of the observance of the legal obligations by the contracting parties.

The system of supervision demands that the contracting parties prepare reports concerning their compliance with the minimum standards provided within the Code, Protocol and Revised Code. These reports are then assessed by experts, who report in turn to the Committee of Ministers of the Council of Europe. The Committee of Ministers is composed of all the Foreign Ministers of the governments of the member states of the Council of Europe or the Ministers' Deputies. The Committee of Ministers then votes to determine if the contracting party has fulfilled its obligations. If the contracting party has failed to uphold the minimum standards to which it has committed itself then the Committee of Ministers can make resolutions inviting the contracting party concerned to rectify the situation and respect its international obligations. The Code and Protocol are subject to the same procedure for assessment of national reports. The Revised Code follows the same basic process as that developed for the Code but with a few important differences.

The Code, Protocol or Revised Code can have an important impact both on the national legislation process and the national judiciary in each of the contracting parties. When new laws are passed, the experts in the ministries are called upon to check the compliance of the new rules with the prescriptions of the Code. If necessary, potential contradictions can be discussed with the experts of the ILO or the Council of Europe.

The influence on the national judiciary largely depends on the way rules of international law are implemented in the respective national legal system. In this regard a distinction should be drawn between monist systems on the one hand and dualist systems on the other. In monist systems, international treaties are automatically incorporated in national law upon ratification. In dualist systems, the contents of international treaties are not accepted by national law until they are first expressly incorporated by national legislation. Furthermore, even if the provisions are incorporated as part of the national law, they can only be applied directly by the national courts if they are considered by those courts to be self-executing. An international provision is self-executing (sometimes called "directly applicable" or "directly effective") when it is clear, precise and unconditional. In the case of the Code, the Protocol and the Revised Code most of the prescriptions leave the state parties a wide range of discretion on how to comply with their provisions. These prescriptions are therefore insufficiently precise, conditional upon further acts of discretion and therefore not self-executing. For example, Article 10, paragraph 2, of the Code states that cost-sharing by the patient for medical treatment should be so designed as to avoid hardship. This does not lay down any precise levels on patient participation and would be dependent upon further definition by national law. However, there are some exceptions such as Article 68, sub-paragraph f, of the Code that states that benefits can only be suspended in the case of a wilful misconduct of the person concerned, not in the case of gross negligence. This provision is clear, precise and effectively leaves the state party no choice in how it should be implemented. It is important to stress that it is the national court that decides whether a provision in an international treaty is self-executing or not, the Council of Europe can not force a state to accept provisions of the Code, Protocol or Revised Code as self-executing.

If an international provision is not accepted as being self-executing, it may still have an impact on how national judges interpret national law. This is because the national court may assume that, when passing domestic legislation, the national legislator would not disregard its international obligations unless this divergence from international standards is made absolutely clear in the legislation itself.

The preparation of national reports

The European Code of Social Security

Article 74 of the Code requires the contracting parties to prepare a national report every year. The article itself lays down a list of information that must be encompassed within the report; this includes statistical data on the:

- Number of persons protected;
- Amounts of benefit paid;
- Duration of unemployment benefit;
- Distribution of social security financing obligations between employers and employees.

The committee of experts has made the production of national reports easier by producing a standard format. This standard format first sets out the provisions of the Code and, wherever relevant, asks questions about the application of those provisions, such as “Please state whether the duration of unemployment benefit is limited and, if so, which are the limits or limits fixed”. The reports have to be completed in one of the two official languages of the Council of Europe, English or French. Copies of the national legislation that implements the contracting party’s obligations under the Code must accompany the report. This national legislation does not have to be translated into French or English.

The structure of the reports required for the Code is very similar indeed to those required by ILO Convention No. 102. For this reason, contracting parties can usually satisfy their reporting obligations under the Code by submitting the same report they produced for the ILO.

The production of national reports requires a great deal of preparation. For this reason, it has been declared that full reports, produced according to the standard structure developed by the committee of experts, shall only be produced every four years. In the years between the contracting parties need only report any developments or amendments that have taken place within their system. These reports on developments and amendments must be produced every year and supported by copies of any amended legislation. This is the same procedure that has been adopted by the ILO as regards Convention No. 102, which means that contracting parties to the Code may still rely upon the reports that shall be provided under the ILO system.

The European Code of Social Security (Revised)

The Revised Code dictates that the contracting parties must provide a full report in the first year following ratification, covering compliance with all the minimum standards accepted by the party in question. Following this, an annual report should be produced detailing any changes in legislation, accompanied by copies of the appropriate national legislation and the statistical data required by the Revised Code in relation to the persons covered, amounts of benefits, etc. Another full report must be produced every four years after the first full report.

Supervision of the national reports

The European Code of Social Security

The completed national reports are deposited with the Secretary General of the Council of Europe along with copies of the national legislation. The Secretary General is free to request any additional information which may be necessary to assess compliance with the minimum standards established within the Code. The Secretary General sends the reports on to the Director General of the International Labour Office of the ILO. The Director of the International Labour Office then forwards the reports to the ILO Committee of Experts on the Application of Conventions and Recommendations, which is responsible for assessing the compliance of the national legislation with the ILO conventions. The committee is composed of twenty members selected from eminent labour and social security law experts from across the world. They include professors, judges and former government officials chosen by the Governing Body of the ILO for their thorough knowledge and objectivity.

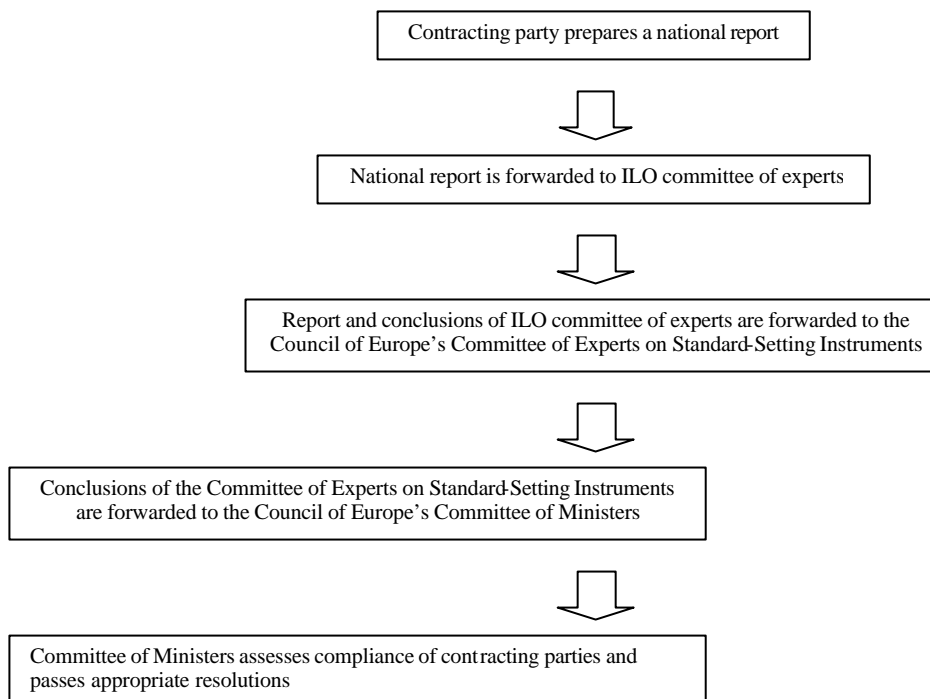
This example of close inter-organisational co-operation between the Council of Europe and the ILO allows the Council of Europe to benefit from the resources of an internationally renowned committee of experts. It also ensures a significant degree of harmonisation in the application of the Code and ILO Convention No. 102, which is important considering these instruments are so similar in scope and substance. Once in receipt of the national reports the ILO committee of experts prepares its report and conclusions.

The conclusions of the ILO committee of experts are returned to the Secretary General of the Council of Europe and discussed by the Council of Europe's Committee of Experts on Social Security. Over the years the name of the Committee of Experts on Social Security has changed, it is currently called the "European Committee of Experts on Standard-Setting Instruments" (known as the CS-CO). The CS-CO is composed of senior officials from the social security ministries of each member state and observers from international organisations such as the European Union. The CS-CO prepares its conclusions concerning the application of the Code on the basis of the report and the conclusions of the ILO committee of experts, which allows the member states to provide any extra information where this may be necessary. The report of the CS-CO is then forwarded to the Committee of Ministers of the Council of Europe.

The Committee of Ministers is also free to ask for the opinion of the Parliamentary Assembly of the Council of Europe. However, in practice this power has never actually been used (May 2002).

The Committee of Ministers assesses the conclusions of the CS-CO and decides, acting by a two-thirds majority, whether the social security schemes provided by each contracting party fulfil the minimum standards established by the Code. If it is decided that they do not then the Committee of Ministers shall produce a resolution asking the contracting party to rectify the situation. Failure to comply with this resolution will not incur direct sanctions but it will create political debate in the contracting state and will act as useful ammunition for social partners or opposition parties in parliament.

The process of supervision of national reports under the Code may be visualised like this:



The European Code of Social Security (Revised)

The details of the reporting mechanism for the Revised Code may be found in Article 79 thereof. Unlike the Code, the Revised Code provides that the contracting parties must give copies of their reports to the most representative organisations of employers and workers. Any comments made by these bodies must be forwarded along with the report and relevant national legislation to the Secretary General of the Council of Europe.

The procedure adopted by the Revised Code does not involve the assistance of the ILO committee of experts. Instead, it seeks to establish a European Commission of Independent Experts (henceforth the “Commission”) within the Council of Europe itself. The Commission shall be composed of no more than five members who are selected by the Committee of Ministers from a list of nominations advanced by the Secretary General. The current plan is that only three experts would be appointed until the total number of contracting parties reaches seven and then a panel of five will be appointed. The members of the Commission shall be elected for renewable terms of six years.

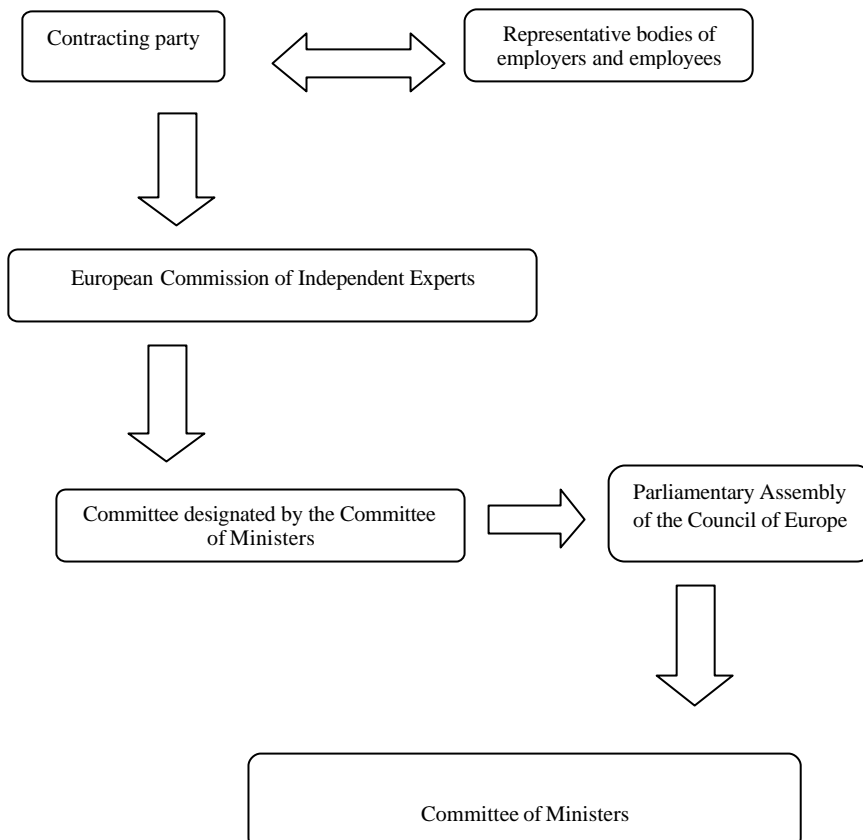
The Commission then takes over the role of the ILO committee of experts and is the first to prepare a report on the national reports. The report of the Commission is then forwarded to a special committee designated by the Committee of Ministers in order to provide feedback from the member states.

The designated committee uses the report produced by the Commission to prepare its own conclusions for the Committee of Ministers, which must then be forwarded for comment to the Parliamentary Assembly of the Council of Europe. Unlike the Code, the Revised Code makes this reference to the Parliamentary Assembly compulsory.

The conclusions of the designated committee and the opinion of the Parliamentary Assembly are forwarded to the Committee of Ministers, which then decides, on the basis of a two-thirds majority, whether each contracting party complies with its obligations. If the minimum standards are not met then the Committee of Ministers may adopt a resolution inviting the contracting party in question to rectify the situation.

The ILO shall be invited to nominate a representative who will sit in a consultative capacity on both the Commission and the designated committee. This will help to preserve a uniform interpretation of the ILO social security conventions and the Code.

The progress of national reports through the various supervisory bodies may be visualised as follows:



Reports on parts that have not been adopted

The European Code of Social Security

As explained above, the Code is very much a menu-type instrument, allowing the contracting parties to pick and choose, on the basis of certain rules, which of its provisions shall be applicable. Article 76 obliges the contracting parties to present reports every two years on the law and practice relating to the parts of the Code that it has not yet adopted. The parts that have not been adopted are often referred to as non-accepted provisions. The reports on non-accepted provisions are not subject to the supervision procedure described above but are assessed by independent experts appointed by the Council of Europe. The experts look at whether the law and practice comes up to the minimum standards provided for in the Code and if not then it gives suggestions on how compliance could be secured. It is hoped that if states realise that the provisions of the Code are already fulfilled or could be satisfied with only a small amount of effort, then they are more likely to adopt the provisions formally.

The European Code of Social Security (Revised)

Article 82 of the Revised Code provides for reporting on non-accepted provisions every four years instead of two. It also provides for a more formal appraisal of these reports than the Code. Whereas the Code does not specify which experts shall assess the reports on non-accepted provisions, the Revised Code on the other hand states that these reports shall be considered by the European Commission of Independent Experts (the “Co mmission”). The conclusions of the Commission are then forwarded to the Secretary General who passes them on to the contracting parties.

Part D: A summary of the minimum standards and their interpretation

Introduction

This part of the guide deals with the minimum standards established by the Code, Protocol and Revised Code. It will deal with the minimum standards established in the following areas:

- Medical care;
- Sickness benefit;
- Unemployment benefit;
- Old age benefit;
- Employment injury benefit;
- Family benefit;
- Maternity benefit;
- Invalidity benefit;
- Survivors' benefit;
- Calculation of benefits;
- Suspension of benefits and the possibility of appeals;
- Financing of social security.

Each set of minimum standards will be dealt with in turn. For each set of standards, the guide will deal with four separate issues. The first focuses on the levels set by the Code. The second looks at the increase in standards established by the Protocol. The third describes how each set of standards has been interpreted by the supervisory bodies of the Council of Europe. The fourth outlines the prospects for the future by summarising some of the developments established by the Revised Code. This final section focuses upon those provisions that illustrate how the Revised Code has enhanced gender equality, secured higher minimum standards whilst simultaneously allowing considerable flexibility to the contracting parties and, finally, updated the Code and Protocol to reflect some of the changes that European societies have experienced over the last three decades.

Chapter D1

Medical care

The European Code of Social Security

Definition of the contingency and material scope: the contingency covered is the need for preventative or curative medical services for any morbid condition.³¹ “Morbid condition” is defined by the ILO as any condition that requires medical care. This is a rather circular definition. What is the scope of medical care according to the Code? The answer is medical services required for any morbid condition. What is a morbid condition? The answer is anything that requires medical care. This circular argument is an indication of the extremely wide range of medical services covered by the Code including all those that are intended to treat an existing ailment or prevent the development of an ailment. Pregnancy and delivery are also included in the material scope of medical care as well as any medical consequences stemming therefrom.

Personal scope: the personal scope of health care can be organised in a number of ways. An important distinction to make is that between the provision of derived rights and individual rights. Systems that operate through derived rights will usually base entitlement on employment or economic activity, this means that employees or the economically active are directly entitled to medical care. These rights are then extended to the wives and children of the employee or economically active person, in other words the wives and children derive their entitlement to medical care from the employees or economically active people in their family. Systems that base entitlement on residence provide individual rights so that every man, woman and child is directly entitled; their rights are not derived from anyone else. The Code makes provision for systems that are based upon derived rights stemming from employment or professional activity as well as those systems offering individual rights based upon residence.

Systems that are based upon employment must ensure that a minimum of 50% of all employees are covered and that the wives and children of these employees are given derived rights to medical care.³² Systems that are based on professional activity must ensure that at least 20% of all residents are insured because they perform an economic activity and that the wives and children of this 20% are also covered.³³ This means that in reality far more than 20% of all residents will be covered by either direct or derived rights to medical care, in fact using the model of the standard beneficiary as a man with a wife and two children this could lead to coverage of approximately 80% of all residents. The Code defines the scope of derived rights as extending only to wives and children, it does not mention unmarried partners or households where the wife is economically active and the husband dependent upon her, nor does it provide any guidance as to whether the children covered should be legitimate.³⁴ Systems that are based upon individual rights given to residents must ensure that they cover at least 50% of all residents.³⁵

The type of benefit: the benefits for morbid conditions must include:³⁶

- Care by general practitioners (GPs), who are also sometimes called “family doctors” or “primary care providers”. Often GPs will act as the first port of call for patients and will be responsible for authorising specialist or hospital treatment. As well as providing GP care the contracting parties must also provide for home visits by GPs;
- Specialist care in hospitals either on an in-patient or an out-patient basis. Any specialist care that can be reasonably provided outside the hospital infrastructure should also be made available;
- Essential drugs but only if they are prescribed by doctors or specialists;
- Treatment and (overnight) care in a hospital whenever it is needed, this includes the so-called “hotel costs” of hospital treatment including the costs of food and board.

The minimum benefits for pregnancy and delivery must include:³⁷

- Pre-natal treatment, delivery care and post-natal treatment by a medical practitioner or “qualified” midwife. This means that all states that rely upon midwives must impose minimum standards of qualification;
- Treatment in a hospital as well as bed and board therein.

³¹ Article 8 of the Code.

³² Article 9, sub-paragraph a, of the Code.

³³ Article 9, sub-paragraph b, of the Code.

³⁴ Article 1 does define “child” but this simply provides age limits and does not refer to legitimacy.

³⁵ Article 9, sub-paragraph c, of the Code.

³⁶ Article 10, paragraph 1, sub-paragraph a, of the Code.

³⁷ Article 10, paragraph 1, sub-paragraph b, of the Code.

Article 10, paragraph 2, declares that “the beneficiary or his breadwinner may be required to share in the cost of medical care the beneficiary requires in respect of a morbid condition”. Some states require what is known as a “co-payment” towards the costs of the treatment provided. Co-payments are often viewed as a means of raising revenue for the health care system and of encouraging people to restrict their use of medical care thus making them more responsible in their consumption of costly resources. The organisation of co-payments may be explained by distinguishing between two types of social security health care system: reimbursement mechanisms on the one hand and benefit in-kind systems on the other. People covered by reimbursement mechanisms must join a social health insurance fund. When they go to the doctor they pay the doctor for the full cost of the treatment and then return to the social insurance fund with a receipt in order to claim a refund of some of the money they paid to the doctor. For instance the patient has to pay her doctor €10, they then go to the social health insurance fund with the receipt and are paid back €8, in this case the co-payment is 20% or €2. Very expensive treatment such as that provided in hospitals will not usually have to be paid for in full by the patient in a reimbursement system but will be covered directly by the social health insurance fund.³⁸ In benefit in-kind systems, the patient attends a doctor who is paid by the social security health care system and so the patient does not have to pay the doctor for the full cost of the treatment. However, benefit in-kind systems may provide for a visit fee which is paid every time the doctor is consulted or a fixed contribution that must be paid toward certain treatments.

Of course, co-payments may also be levied on pharmaceuticals, bed and board in hospitals and specialist treatment. These services may also be provided through a reimbursement mechanism, where the patient pays the provider in full and is later refunded, or a benefits in-kind system, where the patient is given the services “free” but still has to make a small contribution.

Three more points should be made about the minimum standards in relation to co-payments. Firstly, the provisions refer to the co-payments being made by “the beneficiary or his breadwinner”. This recognises that some states may operate a system based upon derived rights in which case co-payments incurred by the wives and children of the directly entitled person become the responsibility of that directly entitled person. This is another example of the Code respecting the diverse ways in which contracting parties choose to operate their systems. Secondly, Article 10, paragraph 2, only refers to co-payments for treatment of “morbid conditions” and not treatment required for pregnancy or delivery; this means that co-payments cannot be levied on medical care related to maternity. Finally, it should be noted that no specific limits are placed on the levels of co-payments by the Code. It only states that the level of co-payments must not cause hardship to those covered.

The provisions relating to benefits also make it clear that the state is under an obligation to encourage people to take advantage of the health services available.³⁹ This creates an obligation to inform people not just about the curative treatment available but also the preventative measures provided by the health care system.

The conditions of entitlement: the minimum standards on medical treatment allow the state to impose a qualifying period that would make entitlement to benefits conditional on the completion of a set period of employment, residence or any combination of these. There is no maximum qualifying period set down. The only guidance is that the qualifying period may be no more than is considered necessary to avoid abuse.⁴⁰ The definition of abuse is left to the contracting party but the supervision mechanism of the Code is allowed to determine whether or not the qualifying periods provided are excessive. The concept of preventing abuse is, *inter alia*, intended to avoid those situations where someone moves to a new state purely and simply in order to obtain costly medical treatment under that state’s social security system. It was thought that without minimum periods of residence or employment people would move into a state obtain the expensive treatment and then leave without making any valid contribution to the costs of that treatment through income tax or social security contributions.

The calculation method used for periodic cash benefits: the minimum standards on health care do not relate to cash benefits.

The period of entitlement to benefit: Article 12 of the Code states that medical treatment must continue throughout the contingency or for at least twenty-six weeks for each case of morbidity. However, some system should be adopted in every contracting party that enables the duration to be extended for prescribed diseases. Furthermore, the provision of medical care shall not be suspended during the payment of sickness benefit.

The waiting period: the Code makes no mention of any waiting periods and the only inference from this is that waiting periods are not acceptable when it comes to medical care.

The Protocol to the European Code of Social Security

³⁸ This is sometimes referred to as the “third payer principle”.

³⁹ Article 10, paragraph 4, of the Code.

⁴⁰ Article 11 of the Code.

Definition of the contingency and the material scope : no change.

The personal scope: for those systems which base entitlement on employment, the minimum personal coverage is extended to 80% of all employees as well as the wives and children of those employees. For systems based upon economic activity, the minimum personal scope is increased to 30% of all residents; the wives and children of this 30% of all residents must also be insured. For those systems that are based upon residence, at least 65% of all residents must be covered by this contingency.

The type of benefit: the Protocol redefines the range of services in the following way:

For morbid conditions:

- Care by general practitioners (including home visits) and treatment by specialists;
- Hospital care, including bed and board as well as nursing and all auxiliary services required. The Protocol thus provides a better definition of what constitutes “hospitalisation” and makes express reference to nursing and auxiliary services. No definition of auxiliary services is provided but it may apply to treatment provided by physiotherapists, nutritional experts, counsellors, etc;
- All necessary non-proprietary pharmaceutical supplies and proprietary preparations regarded as essential. In this context “proprietary” refers to medicines prescribed by a doctor;
- Conservative dental care for children. This is not included in the minimum list of services under the Code and covers not just preventive dental treatment but any dental care intended to prolong the good health of teeth and gums.

In the case of pregnancy, delivery and the consequences thereof:

- Pre-natal treatment, delivery and post-natal treatment by medical practitioners and qualified midwives;
- Hospital care where needed, including bed and board;
- Pharmaceutical supplies. These are not provided for under the Code. It should also be noted that the Protocol does not confine the range of pharmaceuticals to those prescribed by a medical practitioner, which implies that all drugs required during pregnancy, delivery and the post-natal period should be covered by the social security system.

The Protocol enlarges the scope of treatment by both providing better definitions of the minimum range of treatment already described in the Code and adding some new services to the list.

The Protocol also clarifies the situation as regards co-payments. The Code provided that co-payments should not cause hardship. The Protocol still demands that hardship to patients should be avoided but goes further by setting absolute maximum amounts on the level of co-payments that can be levied for medical goods and services provided under the social security health care system. The maximum level of co-payments are established as a percentage of the total costs of treatment:

Treatment	Maximum permissible co-payment
Care by a GP or specialist outside a hospital	25% of total cost
Hospital care	25% of total cost
Pharmaceuticals	25% on average
Conservative dental care	33.3% of total cost

The provision of treatment for pregnancy, delivery and the post-natal period remains free from co-payments under the Protocol but a co-payment is permitted for pharmaceutical products used during this treatment. The co-payment in this case may not exceed 25% of the cost of the pharmaceuticals used.

However, not all states fix co-payments as a pre-determined percentage of the total cost of the treatment or drugs received. Many states simply have fixed co-payments for certain treatments or services. For example, all prescriptions from a general practitioner cost €3 per item, regardless of how much each individual drug actually costs. Other states would have tremendous problems calculating the actual costs of each individual treatment. The Protocol allows states like this to take a more global approach to co-payments. They are allowed to compare:

- The total amount of co-payments made for the different types of goods and services described in the table above made by all the protected persons in their territory with
- The total amount of expenditure by the state in these fields in a given period. The resulting percentages may not be higher than those prescribed in the table above.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: the maximum period of hospital treatment is extended from twenty-six weeks in each case to fifty-two weeks in each case or seventy-eight weeks in any consecutive period of three years, whichever the contracting party shall select.

The waiting period: no change.

Interpretation

Monitoring the level of co-payments involves a delicate balance. On the one hand, co-payments are thought to assist in the financing of health care services and encourage the responsible use of resources by patients. However, on the other hand, excessive co-payments may discourage people from attending a doctor at the early stages of illness and could also lead to a two-tier system where only the rich can afford social health care. Furthermore, co-payments could cause a problem for those who suffer from long-term illness or chronic disease. For this reason, contracting parties are obliged to provide detailed statistics to the committee of experts. The reader will recall that the approach taken to co-payments varies considerably between the Code and the Protocol. The Code stipulates that co-payments should be set at such a level as to avoid hardship to those required to pay them whereas the Protocol sets hard and fast maximum levels for co-payments. Setting fixed levels for co-payments makes their assessment more structured and the remainder of this section shall focus upon the committee of experts' approach under the Protocol.

When assessing the level of co-payments, the committee of experts is prepared to look at the global picture. The committee accepts that some parts of the population may pay higher co-payments than others and acknowledges the efforts made by the contracting parties to protect vulnerable groups such as children, the elderly, the chronically ill, recipients of social assistance and low-income families. These vulnerable groups may be protected in a number of ways. They may be entirely exempt from some or all co-payments. They may pay a reduced co-payment for some or all of their medical goods and services. Some states impose ceilings on co-payments for all or just the vulnerable parts of the population. The ceiling system obliges patients to make co-payments up to a set level in any fixed period after which all medical treatment is provided free of any charge. The committee of experts recognises these efforts by looking at the average co-payment made; if this falls below the level advocated in the Protocol then it does not matter that the more affluent population is obliged to make co-payments slightly higher than those advocated by the Protocol.⁴¹

The committee of experts is also prepared to balance the range of medical goods and services available against co-payments that may be slightly higher than those demanded by the Protocol. For example, in 1986, the committee of experts noted that the co-payments for pharmaceuticals in Belgium amounted to 25.21%. However, Belgium had committed itself to the 25% level established by the Protocol. In its defence, the Belgian Government stressed that the range of pharmaceuticals provided by the social system was greater than that required by the Protocol, which demands only the coverage of essential drugs. The Belgian system covered many non-essential drugs and this increased range of coverage was deemed sufficient to compensate for the very small amount by which co-payments exceeded the maximum levels established in the Protocol.⁴²

The approach of the supervisory bodies in the case of co-payments indicates that they are prepared to be flexible. Allowing slight infringements to be compensated by the provision of benefits that are of a higher standard than that required by the Protocol or looking at the global picture by considering the average co-payment for all beneficiaries.

⁴¹ For example, see the Committee of Experts on Standard-Setting Instruments in the Field of Social Security (CS-CO), Meeting Report, 2001, on Belgium.

⁴² Resolution of the Committee of Ministers on the application of the European Code of Social Security by Belgium, 1986.

The European Code of Social Security (Revised)

The Revised Code abandons the phrase “morbid condition” and replaces it with a more functional definition of this contingency. Article 8 of the Revised Code defines the contingency as “the need for medical care of a curative nature and, under prescribed conditions, the need for medical care of a preventive nature”. The first point to note is that no mention is made of treatment for pregnancy and delivery, these are dealt with entirely in Part VIII on maternity. As with the Code, the Revised Code covers both curative and preventive treatment but unlike the Code, the Revised Code distinguishes between them. As with the Code, the Revised Code obliges contracting parties to provide curative treatment. However, unlike the Code, the Revised Code allows the provision of preventive treatment to be curtailed according to ‘prescribed conditions’. This means that the contracting parties are free to restrict the provision of preventive care provided that these restrictions are clearly defined and accessible to the public. There is no further guidance from the Revised Code on the limits of these “prescribed conditions”, which is an issue that may well have to be dealt with through interpretative resolutions adopted via the supervision procedure.

The Revised Code significantly increases the range of medical treatment that must be made available as compared to that defined in the Code and the Protocol. Contracting parties must provide access to the following for all those who are covered by the personal scope of social medical care:⁴³

- General practitioner and specialist care provided inside hospitals, in institutions other than hospitals and at the patient’s home;
- Care provided by “a member of a profession legally recognised as allied to the medical profession, under the supervision of a medical or other qualified practitioner”. What this means is not precisely clear and rests on what is legally recognised as an allied profession according to the law of the contracting party. No similar comment appears in the Code but reference is made to “nursing and auxiliary services” in the Protocol. This new definition in the Revised Code relies upon national legislation as to whether the following types of professional are covered: specialised nurses, anaesthetists, ward nurses, physiotherapists, speech therapists, etc;
- Necessary pharmaceuticals as prescribed by medical or other practitioners. Unlike the Protocol, the Revised Code does not therefore stem to necessary medicines that are not prescribed by a doctor;
- Maintenance in a hospital or other medical institution, which covers the so-called “hotel costs” of food and board;
- Dental care and all necessary dental prosthesis for all insured persons. This is a significant development upon the Code, which does not mention dental treatment at all, and the Protocol, which only provides for conservative dental care for children;
- Medical rehabilitation including the supply and maintenance of orthopaedic and prosthetic appliances. No mention of these services was made in either the Code or the Protocol;
- Transport of patients as prescribed by national law. This leaves a wide range of discretion to the contracting parties. No such provision appeared in either the Code or the Protocol.

The Revised Code also deals with the levying of co-payments for medical treatment stating that such payments must be such as ‘not to impose hardship or render medical and social protection less effective’.⁴⁴ No prescribed maximum percentages are laid down in the Revised Code as they are in the Protocol and therefore the Revised Code has taken a step towards the old system used in the Code, namely that the rules on cost sharing “should avoid hardship”. This means that the commission of experts will not be able to assess co-payments against a hard and fast background as is done with the Protocol. The new approach adopted in the Revised Code will allow the commission to look beyond just percentages and pay very careful consideration to how the whole system of co-payment operates. Of course, there is nothing to stop the commission finding that co-payments that are lower than the percentages set by the Protocol still violate the new provisions of the Revised Code. Essentially, the Revised Code enables deeper investigation.

According to the Revised Code health care treatment should continue until the patient either recovers or dies.⁴⁵ The Revised Code therefore makes the duration of health care unlimited as opposed to the acceptable maximum duration of twenty-six weeks provided for in the Code.

⁴³ Article 10, paragraph 1, of the Revised Code.

⁴⁴ Article 10, paragraph 2, of the Revised Code.

⁴⁵ Article 12, paragraph 1, of the Revised Code.

Chapter D2

Sickness benefit

The European Code of Social Security

Definition of the contingency and the material scope: the contingency applies to incapacity for work caused by a morbid condition provided that it results in the suspension of earnings.⁴⁶ “Morbid condition” is defined by the ILO as any condition that requires medical care and the provisions of the Code on medical care distinguish morbid conditions from the treatment required for pregnancy and delivery. This means that sickness benefits are not deemed to cover incapacity relating to maternity and birth as these benefits are covered under the contingency of maternity.

The personal scope: the Code respects the diversity of the national systems by offering three options for the assessment of minimum personal coverage.⁴⁷

- For those systems that base entitlement on employment: 50% of all employees must be covered by sickness benefit insurance;
- For those schemes that base entitlement on economic activity: 20% of all residents must be covered by sickness benefit insurance;
- For those systems that only pay benefits to incapacitated persons whose means fall below a set level, in other words systems that apply a means test, all residents who satisfy the means test must be covered by sickness benefit insurance. The set level applied by the means test is also controlled by the Code and is covered by the part on the calculation of benefits.

The type of benefit: the state must provide a periodic cash benefit.⁴⁸

The calculation method used for periodic cash benefits: the minimum amount of the periodic benefit is governed by the part on the calculation of benefits and is dealt with below in Chapter D10.

The conditions for entitlement to benefits: the Code does not specify any exact maximum qualifying period. Instead, the contracting parties are free to set minimum periods of employment, residence or both that are necessary to preclude abuse.⁴⁹ The contracting parties decide what constitutes abuse but the supervisory mechanism of the Code decides whether or not the qualifying periods applied are excessive. The contracting parties therefore have a wide but controlled discretion to define “abuse”. This definition may be developed to prevent situations of “social tourism”. Social tourism involves people moving from one state to another in order to take advantage of better social security benefits. The fear is that costly benefits would be provided even though the recipients have made no contribution towards their financing through taxation or social security payments. Minimum qualifying periods were thought to discourage social tourism and ensure some contribution to the cost of providing benefits. Experience within the European Union has indicated that the problems of social tourism are not as great as originally expected and that the movement from one country to another is often curtailed by more compelling considerations such as leaving one’s family or learning a new language.

The period of entitlement to benefit: the benefits must be paid throughout the incapacity or for a maximum period of twenty-six weeks per instance of incapacity. This limitation confirms that sickness benefits are generally intended for periods of temporary incapacity for work.⁵⁰

The waiting period: a maximum waiting period of three days is established by the Code. This means that the entitled person may have to spend three days away from work before they are entitled to any benefit.⁵¹ The establishment of a waiting period is thought to discourage absenteeism.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: no change.

⁴⁶ Article 14 of the Code.

⁴⁷ Article 15 of the Code.

⁴⁸ Article 16 of the Code.

⁴⁹ Article 18 of the Code.

⁵⁰ Article 18 of the Code.

⁵¹ Article 18 of the Code.

The personal scope: the minimum personal coverage of schemes based on employment is increased by the Protocol from 50% to 80% of all employees. The personal scope of schemes based on economic activity is also increased by the Protocol from 20% to 30% of all residents.

The type of benefit: no change.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: the Protocol increases the maximum period of payment from at least twenty-six weeks for each case of sickness to either fifty-two weeks in each case or seventy-eight weeks in any period of three consecutive years.

The waiting period: no change.

Interpretation

The contracting parties are free to decide how to organise their system of sickness benefits provided that their system complies with the minimum standards contained in the Code or Protocol. The committee of experts has held that the minimum duration of sickness benefit must be ensured to all those who fall within the minimum personal coverage established by the Code or Protocol. For instance, in Cyprus entitlement to sickness benefit is given to all those who have paid contributions throughout their career equal to at least twenty-six times the basic weekly insurable earnings and contributions in the last twelve months of at least twenty times the basic weekly insurable earnings. Note that the requirement is not twenty-six weeks of payments but an amount equivalent to twenty-six times the basic weekly insurable earnings, thus the qualification period can be completed in much less than twenty-six weeks for those on higher incomes. The level of basic weekly insurable earnings is set by the state every year.

Persons who have paid the equivalent of twenty-six times the basic weekly insurable earnings are entitled to thirteen weeks of benefit. For every amount equivalent to basic weekly insurable earnings paid in excess of twenty-six times this amount, the claimant is given an extra day of benefit up to a maximum of 156 days additional days.

The Code provides that contracting parties must deliver sickness benefits for at least twenty-six weeks. In a resolution dating from 1997, the Committee of Ministers asked Cyprus to increase this maximum duration of benefit in order to comply with the Code. The government replied, stating that as the duration of benefit depended upon the amount of contributions rather than the number of weekly contributions made, most people would gain the extra period and therefore be covered for the full twenty-six weeks. The only people who were unlikely to gain additional coverage taking the duration of their benefit up to twenty-six weeks were young workers who were less likely to fall ill for long periods. The government was essentially saying that although the structure of the system appeared to fall short of the standards advanced by the Code, in reality most people were adequately protected. The Committee of Ministers did not accept this argument and continued to put pressure on Cyprus to ensure full compliance with the Code for everyone. In 1998, Cyprus amended its legislation by extending the duration of entitlement to sickness benefits to twenty-six weeks. This is an indication of the potential influence of the Committee of Ministers' resolutions.

The European Code of Social Security (Revised)

Unlike the Code and Protocol, this contingency is no longer described in terms of "morbid condition" but by a functional approach that focuses upon any illness or accident that causes incapacity for work and leads to a suspension of earnings.

As with the Code and the Protocol, the Revised Code obliges contracting parties to provide periodic cash benefits. Unlike the Code or the Protocol, the Revised Code makes provision for a lump-sum funeral grant to be paid should a person die whilst in receipt of sickness benefit. The amount and conditions of entitlement are left to the discretion of the contracting party.

Chapter D3

Unemployment benefit

The European Code of Social Security

Definition of the contingency and the material scope: the contingency is defined as the ‘suspension of earnings, as defined by national laws or regulations, due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work’.⁵² The first point to note about this definition is the reference to the “suspension of earnings”. This implies that a person need only be covered by these provisions if they already had a job before they became unemployed. This would effectively exclude graduates from school or higher education as well as those who have never worked because of family commitments but now intend to take up paid employment.

What constitutes “suspension of earnings” is left to the national legislation. It should be borne in mind that earnings may be suspended for a number of reasons and in each case the contracting party is free to decide whether or not unemployment benefit should be paid in these circumstances:

- Voluntary unemployment: this occurs when the employee leaves of their own accord, either with or without notice;
- Involuntary unemployment: this occurs when a worker is obliged by the employer to leave due to no fault of that employee, the most typical example of this is when the worker becomes “redundant” due to the economic situation of the employer;
- Dismissal: whereby a worker is forced to leave due to their violation of employment regulations or because they are incompetent;
- Constructive dismissal: this takes place when working conditions become so intolerable, perhaps due to deliberate bullying by the employer, that the employee is forced to give their notice and leave;
- Industrial action: this may be due to industrial action by employees such as strike or industrial action by employers such as lock outs.

In Article 68, the Code cites both voluntary unemployment and strike action as justifiable reasons for the stopping of unemployment benefits.

The definition also refers to persons being “capable of, and available for, work”; in some respects this represents a definition of the conditions of entitlement. No guidance is provided by the Code on the meaning of these terms.

The Code refers to the concept of ‘suitable work’ as opposed to the concept of “any work”. This is an important distinction that often arises in the context of conditions for the entitlement to unemployment benefit. Availability for suitable work takes into consideration a number of factors such as the qualifications of the unemployed person, their experience, age and motivations. The concept of suitable work would prevent a university professor being forced to accept a position as a road sweeper. Availability for any work does not take into consideration the individual qualities of the jobseeker and obliges them to accept any position offered to them. Of course, the danger of this latter approach is the erosion of skills as well as the impact on the mental health of the person concerned and the potential dissidence created in society as a whole. The concept of “suitable work” in the context of the Code has been interpreted by the committee of experts of the ILO (see “Interpretation” below).

The personal scope: the minimum personal coverage for unemployment benefits takes into consideration two types of system.⁵³

- The first is that based upon employment, in which case at least 50% of all employees must be covered;
- The second is that based upon means tests applied to residents. In this case, the scheme must cover all those residents who are affected by unemployment as it is defined above and whose means fall below a set level. The set level is controlled by the Code in the part dealing with the calculation of periodic cash benefits. However, systems that base entitlement upon means tests in this fashion must also ensure that at least 50% of all employees are guaranteed payment of an unemployment benefit that is not means tested but the level of this benefit is not prescribed by the Protocol. Effectively, this means that the Code acknowledges systems based upon means testing and residence but these systems must also provide some degree of non-means tested protection as well.

⁵² Article 20 of the Code.

⁵³ Article 21 of the Code.

It is worthy to note that no provision of personal coverage is made relating to the economically active population. This is because unemployment benefit at the time of drafting the Protocol was generally unavailable for self-employed persons.

The type of benefit: the minimum standards provide that a periodic cash benefit must be paid in respect of this contingency.⁵⁴

The calculation method used for periodic cash benefits: the method of calculating periodic benefits respects whether the system is based upon employment or upon means tests applied to residents. The minimum amounts of benefits and the provisions that control the level of means testing are contained within Part X of the Code and dealt with below in Chapter D10.

The conditions for entitlement to benefits: the Code provides that qualifying periods of residence, employment or both may be imposed only to the extent that they are necessary to prevent abuse.⁵⁵ The contracting parties are free to determine what constitutes an abuse in this situation but the supervisory mechanism of the Code is entitled to determine if the periods established are excessive or not. For instance, states may wish to protect the delicate financial balance between social security revenue from income tax or social security contributions, on the one hand, and social security expenditure, on the other, by ensuring that all recipients make a minimum contribution to the system before they claim from it. Allowing immediate entitlement to benefits may allow people to manipulate the system through activities such as social tourism (the concept of social tourism is defined in Chapter D2).

This is an example of how the definition of the contingency within the Code and the Protocol may also contain a number of inherent conditions. These are that:

- Earnings are actually suspended to the degree defined by national law;
- The recipient is capable of work;
- The recipient is available for work.

The period of entitlement to benefit the minimum standards applying to the duration of benefits recognise the various different ways in which unemployment benefits may be organised:

- For those systems based upon employment the states are allowed to choose between providing benefits:
 - throughout the contingency or over a period of at least thirteen weeks during any period of twelve months; or
 - throughout the contingency or over a period of at least thirteen weeks for each case of suspended earnings.
- Systems that are based on means tests applied to residents who suffer from the contingency are obliged to pay the benefit throughout the duration of that contingency or for at least twenty-six weeks in any twelve-month period. It will be recalled that systems based on means tests also have to guarantee non-means-tested benefits to at least 50% of all employees; the minimum duration in respect of these employees must be equal to that established for systems based on employment described immediately above;
- Some systems limit the duration of benefits in accordance with how long the claimant has been paying contributions or how much benefit has already been paid to the claimant on a previous occasion. For example, those who have contributed to the system for one to five years are entitled to ten weeks of benefit whereas those who have contributed for five or more years are entitled to sixteen weeks of benefit. Another example would be a system that declares that those who have received less than €100 of unemployment benefit in the last five years are entitled to sixteen weeks of benefit, whereas those who have received more than €100 during that period are only entitled to benefits for a maximum of ten weeks. Systems that vary the maximum duration of benefits according to periods of contribution or previous payment of benefits shall fulfil their obligations if the average maximum duration of payment is equal to at least thirteen weeks within any twelve-month period.⁵⁶

The waiting period: the Code authorises a waiting period of seven days at the most for each period of suspended earnings. It is hoped that if people have to wait seven days for their benefits they will make a real effort to find work during this period. Temporary periods of employment must be disregarded for this purpose, for example if the claimant is made

⁵⁴ Article 23 of the Code.

⁵⁵ Article 23 of the Code.

⁵⁶ Article 24 of the Code.

unemployed for seven days so that they are entitled to benefit but is then given a job that lasts for only one week they will not have to go through the seven-day waiting period again. The definition of “temporary employment” is left to the contracting parties and no guidelines are given by which the Code can supervise whether or not this definition is acceptable.⁵⁷

The Code specifically allows the adjustment of qualifying conditions and waiting periods to reflect the situation of seasonal workers.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope : no change.

The personal scope : the Protocol increases the minimum personal coverage for those schemes based upon employment from 50% to 55% of all employees.

The type of benefit: the Protocol creates a new obligation upon the contracting parties to facilitate re-employment through the provision of facilities such as labour exchanges, vocational training and assistance in moving districts in order to find work.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: for those systems based upon employment the maximum duration of unemployment benefit is increased from either thirteen weeks for each case of suspended earnings or thirteen weeks within any one year to either twenty-one weeks for each suspension or twenty-one weeks within in any twelve months.

For those systems based upon residence and means tests the benefit under the Protocol must be provided throughout the contingency as opposed to just twenty-six weeks under the Code. This means that the benefit must continue to be paid for as long as the recipient is unemployed, fulfils all the obligations regarding availability for work and continues to pass the means tests.

Where the duration of the benefit varies according to the periods of contribution fulfilled by the recipient or the amounts of benefit previously paid to the recipient, the average duration of benefits must equal twenty-one weeks within any twelve-month period under the Protocol as opposed to thirteen weeks under the Code.

The waiting period: under the Code contracting parties are allowed to apply a maximum waiting period of seven days per case of suspension. The protocol gives them a choice between:

- Three days per case of suspension;
- The first six days within any period of twelve months.

Interpretation

Suitable employment: several contracting parties have been the subject of comment by the committee of experts because of the phrase “suitable employment” used in the Code and Protocol. The committee has given an indication of the factors that should be taken into consideration when deciding if something is ‘suitable employment’. These include the age, qualifications, experience and duration of employment in the person’s previous job as well as family and personal circumstances. The latter are important in considering jobs that may involve moving residence, travelling or working on the night shift. Although the Code provides no definition of “suitable employment”, the committee have requested some states to cease applying concepts that are clearly too restrictive.

One means by which the definition of suitable employment has been restricted is through reversing the burden of proof. For example, instead of obliging someone to accept job offers of suitable employment, the contracting party removes benefits from those who refuse offers of work “without good cause”. The effect is to restrict the definition of unemployment and to place the burden of proof firmly upon the claimant. In other words, under the old system the state had to prove that the work offered was suitable whereas under the new system it is for the claimant to prove that they have good reason not to accept a position. One of several states to be mentioned by the committee for reversing the burden of

⁵⁷ Article 24 of the Code.

proof was the United Kingdom.⁵⁸ The government responded to the committee's comments by pointing out that in practice the concept of suitable employment was respected. Firstly, the employment services would not offer a job that was not appropriate and secondly the concept of suitability was part of the process of determining if the claimant had good cause to refuse a job.

The committee declared in a resolution dating from 2000 that it was prepared to accept that the concept of "suitable employment" was respected in practice if the UK were to provide copies of the administrative guidelines given to those who decide if a refusal of work has been made with good cause. This shows that the committee is prepared to accept the administrative reality of the situation and will accept when something is fulfilled in practice. It also indicates that a state does not have to pass legislation in order to fulfil its obligations; this can be just as easily done with administrative guidelines.

Qualifying period: the Code allows contracting parties to apply "such qualifying period as may be considered necessary to preclude abuse". This leaves the precise length of the qualifying period to the discretion of the contracting party but this discretion is not unfettered and can be assessed by the committee. For example, in Portugal the qualifying period for unemployment benefit was set at 540 days over the preceding 24 months. The Committee of Ministers acknowledged this qualification period was one of the longest in Europe. They also acknowledged the collective complaint made to the ILO by the General Confederation of Portuguese Workers (CGTP-IN) that due to the turbulent economic circumstances very few workers actually satisfied the qualification conditions. The government attempted to defend its position by referring to special provisions that had been adopted in specific industrial sectors, mainly textiles, in certain pilot areas, for example in the Serra da Estrela and Castanheira de Pêra regions.

The Committee of Ministers invited the Portuguese Government to facilitate better access to unemployment benefit for all the workers in the country.⁵⁹

This example clarifies how the committee of experts assesses whether a qualifying period really precludes abuse, that is it compares it to the qualifying periods applied in other states, places it in its economic context and ensures that it does not exclude too many workers.

The European Code of Social Security (Revised)

Unlike the Code and Protocol, the Revised Code distinguishes between "total unemployment" and "unemployment, other than total",⁶⁰ the latter is sometimes described as "partial unemployment". Total unemployment covers situations where a person suffers from an "absence of earnings" whilst actively seeking full-time employment. Partial unemployment is defined by the Revised Code as arising in two situations, a contracting party is free to select either one or both of these options:

- Where a person who is engaged in full-time work or economic activity faces a "loss of earnings" because they are forced to reduce their working hours through no fault of their own. In other words, they remain employed by the same employer or engaged in the same economic activity but they are no longer able to work on a full-time basis. The reduction in working hours must be beyond their choice and not stem from problems with the person's health. What constitutes "full-time work" is "the normal or legal working time" in the contracted party concerned which may be based on labour law, the individual's contract, collective agreement or common custom, etc. In any event it does not include overtime;
- Where a person faces a "loss of earnings" because they were previously unemployed and have had to accept a part-time job or economic activity even though they are capable of and looking for full-time work.

The Revised Code replaces the concept of a "suspension of earnings" that was used in the Code and the Protocol with the phrase "absence of earnings" in relation to total unemployment and "loss of earnings" in relation to partial unemployment. This means that the payment of total unemployment benefits can no longer be restricted to people who were employed or economically active in the past. The Revised Code introduces obligatory coverage for certain classes of person that have never been employed or have not been employed for a long time. The Code and Protocol only cover the "suspension of earnings" as a result of unemployment, indicating that the benefit is not available to those who have never worked (such as graduating students) or who have taken lengthy breaks from employment (such as those caring for children). The Revised Code, however, applies to those who face an "absence of earnings" due to total unemployment. Rather than obliging states to recognise all those who have never worked or have not worked lately, the Revised Code allows states to select at least two of the following categories of persons to whom they must provide unemployment coverage.⁶¹ This is similar to the

⁵⁸ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the United Kingdom, 1989.

⁵⁹ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Portugal, 2000.

⁶⁰ Article 19, paragraph 1, of the Revised Code.

⁶¹ Article 20, paragraph 3, of the Revised Code.

“menu” approach involved in selecting contingencies and is another illustration of the flexibility provided by the Revised Code:

- Young persons who have graduated from vocational training;
- Young persons who have graduated from other studies;
- Young persons discharged from military service;
- Parents who have taken a break to care for a child;
- Persons whose spouse is deceased;
- Divorced persons;
- Discharged prisoners;
- Disabled persons who have completed a period of rehabilitation.

The meaning of terms such as “young person” and “disabled” are left to the contracting parties and will only be challenged by the supervisory procedure if they are clearly wrong. It is worthy of note that this list does not cover older persons returning to education or vocational training.

As with the Code and Protocol, the Revised Code still restricts coverage to persons who are capable of, available for and search for suitable work. Unlike the Code or Protocol, the Revised Code provides a definition of “suitable work”. The Revised Code States that “account shall be taken, under prescribed conditions and as far as appropriate” of all of the following:⁶²

- Age of the employed person (younger people will find it easier to enter a new career field);
- Length of service in previous occupation;
- Experience;
- Total duration of unemployment (the shorter the amount of time that a person has been unemployed the wider the range of potential employment that should be considered);
- State of the labour market (under poor economic conditions a person may have to consider a broader range of prospective activities);
- Any impact upon his personal and family circumstances (for example, the effects of having to work at night or move house).

By referring to “prescribed conditions”, the Revised Code envisages that contracting parties will pass some form of law or regulation defining the concept of suitable employment. Although this leaves considerable discretion to the contracting party, the supervision procedure may still assess whether these prescribed conditions go “as far as appropriate”.

⁶² Article 19, paragraph 2, of the Revised Code.

Chapter D4

Old age benefit

The European Code of Social Security

Definition of the contingency and the material scope: the contingency in the case of old age benefit is defined as “survival beyond a prescribed age”.⁶³ The Code provides some guidance on what constitutes the prescribed age. Generally, the old age pension should be secured at the latest at the age of 65 years. However, this age may be increased if a contracting party can prove that even though the pensionable age is set at a level higher than 65, the number of residents of that age or over is equal to at least 10% of the total population aged between 15 years and the higher pensionable age. For instance, the pensionable age could be increased to 68 years if the contracting party can demonstrate that the total number of people aged over 68 years of age is equal to a figure greater than 10% of the population aged 15 to 67 years of age. In other words, at least 10% of the working population should be over the prescribed age.⁶⁴ This exception to the general rule of 65 years was added in order to respect the demographic diversity within the Council of Europe member states.

The Code permits states to suspend the old age benefit if the recipient engages in prescribed gainful activity.⁶⁵ The nature and extent of this activity is to be defined by the national laws of the contracting parties.

If the contracting party decides not to suspend the benefit entirely, the benefit may also be reduced as follows:

- If the benefits are contributory, in other words connected to employment or economic activity and financed by social security contributions, they can be reduced where the earnings of the recipient exceed certain levels; or
- If the benefits are non-contributory, in other words based upon means testing and financed from general taxation rather than social security contributions, then the amount can be reduced if the recipient receives earnings or any other means above a certain amount.

The concept of “earnings” refers to income from economic activity whereas “means” refers to any source of income, this might include rental income from property or maintenance payments by ex-spouses.

The personal scope: the minimum obligations as regards personal coverage may be fulfilled in three ways,⁶⁶ depending upon how the system in the contracting state is organised:

- For those systems where entitlement is based upon employment, at least 50% of all workers should be covered for the contingency of old age;
- For those systems where entitlement is based upon the wider concept of economic activity, at least 20% of all residents must be covered;
- For those systems that only provide benefits to residents who suffer from the contingency and fulfil a means test, all those with means below a set amount should be covered. This set amount is controlled by the Code and set out in Part XI that deals with the calculation of periodic benefits.

The type of benefit: old age benefit must be paid as a periodic benefit and not a lump sum.⁶⁷

The calculation method used for periodic cash benefits: the minimum amounts of benefit are set according to the provisions in Part XI and take into account the various methods of organising old age benefit.⁶⁸

The conditions for entitlement to benefits: the qualifying periods for pensions may be based upon periods of contribution (during which social security contributions were paid by and/or on behalf of the insured person) or periods of residence. A distinction should be drawn between full pensions, granted after the maximum qualifying period and partial pensions that are paid after a shorter duration. Partial pensions are proportionately lower than full pensions.

The Code provides the contracting parties with a number of options about how to organise full and partial pensions. The first relevant point is whether entitlement to old age pension in the contracting party is based on employment, economic

⁶³ Article 26, paragraph 1, of the Code.

⁶⁴ Article 26, paragraph 2, of the Code.

⁶⁵ Article 26, paragraph 3, of the Code.

⁶⁶ Article 27 of the Code.

⁶⁷ Article 28 of the Code.

⁶⁸ Article 28 of the Code.

activity or residence. The range of options varies between these three basic approaches. These options can be visualised in the table below. Before consulting the table it is important to note that the minimum replacement ratio for an old age pension according to the Code is 40%.⁶⁹

⁶⁹ See Chapter D10.

Provision of a full pension: two alternatives

Periodical payments based on a replacement ratio of 40%		
Pension system based on "employment"	Pension system based on "economic activity"	Pension system based on "residence"
Thirty years of contributions or employment ⁷⁰	Fulfilment of a prescribed qualifying period and payment of prescribed yearly average number of contributions. ⁷¹ For example, fulfilment of a qualifying period of ten years with an average number of forty-five weekly contributions paid per year.	Twenty years of residence ⁷²

Periodical payments based on a replacement ratio of 30%		
Pension system based on "employment"	Pension system based on "economic activity"	Pension system based on "residence"
Ten years of contributions or employment ⁷³		Five years of residence ⁷⁴

The contracting parties are free to decide which system will be used to assess their full pensions; the second alternative provides for a much lower qualifying period but it also provides a lower benefit. It is up to the contracting party to decide if the drop of ten percentage points in the replacement ratio is really balanced by the corresponding reduction of the qualifying period by twenty years of employment or fifteen years of residence.

Provision of a reduced pension

Periodical payments of a reduced benefit (based on a replacement ratio of 40%)		
Pension system based on "employment"	Pension system based on "economic activity"	Pension system based on "residence"
Fifteen years of contributions or employment ⁷⁵	Fulfilment of a prescribed qualifying period and payment of half the number of prescribed yearly average number of contributions ⁷⁶	

Special provisions have been made for those who were already of an advanced age when the national provisions intended to implement this part of the Code entered into force. These people should be entitled to a reduced pension if, due to their advanced age, they are unable to satisfy the conditions relating to qualifying periods in the new legislation.⁷⁷

The period of entitlement to benefit the benefit must be paid throughout the contingency; this means that the benefit must be paid until death.⁷⁸

The waiting period: no waiting periods for old age benefit are mentioned and therefore no waiting periods are permitted.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: the Code contains an exception to the maximum age that takes into account the demographic situation in the contracting party. Under the Code, this exception applies to all types of system, whether entitlement is based on employment, residence or economic activity. The Protocol removes this exception for systems based upon employment and makes 65 years of age the absolute maximum pensionable age in these systems.

⁷⁰ Article 29, paragraph 1, sub-paragraph a, of the Code.

⁷¹ Article 29, paragraph 1, sub- paragraph b, of the Code.

⁷² Article 29, paragraph 1, sub- paragraph a, of the Code.

⁷³ Article 29, paragraph 3, of the Code.

⁷⁴ Article 29, paragraph 3, of the Code.

⁷⁵ Article 29, paragraph 2, sub-paragraph a, of the Code.

⁷⁶ Article 29, paragraph 2, sub- paragraph b, of the Code.

⁷⁷ Article 29, paragraph 5, of the Code.

⁷⁸ Article 30 of the Code.

The Code also provides that old age benefits can be suspended if the pensioner engages in types of economic activity prescribed by the contracting party. Alternatively, for those states that do not wish to suspend benefits in the event of economic activity, the amount of benefit may be reduced if:

- The old age scheme is contributory and the recipient of old age benefits also receives earnings from economic activity above a prescribed amount;
- The old age scheme is non-contributory and the recipient also receives income above a prescribed amount.

The Protocol removes the contracting parties right to reduce non-contributory benefits if the recipient receives income above a prescribed amount.

The personal scope : schemes based on employment had to ensure coverage for at least 50% of all employees according to the Code; the Protocol increases this to 80%. The minimum personal scope of schemes that are based on economic activity was also increased by the Protocol from 20% to 30% of all residents.

Under the Code, benefits were paid to those covered by employment-based schemes, schemes based on economic activity and also schemes that applied to all residents who suffer from the contingency and have means below a certain level. The Code allowed contracting parties to choose freely between these various methods of organisation. The Protocol, however, makes the selection of the third option, schemes based on residence and means tests, only available to states that provide non-means-tested benefits to prescribed classes of employees or the economically active that cover at least 50% of all employees or 30% of all residents respectively. Therefore, the option of relying purely upon a system based on residence and means tests has been removed by the Protocol.

The type of benefit: no change.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

The committee of experts has adopted a strict approach to the maximum qualifying periods laid down in the Code and Protocol. For example, Italy bases entitlement to old age pension on employment and periods of contributions. The Code demands that a reduced old age pension should be paid at the latest after fifteen years of employment or contributions. Reforms made to the pension system in Italy in 1992 gradually increased the contribution period for a partial pension from fifteen to twenty years. That year the committee of experts drew attention to this violation and the Committee of Ministers passed a resolution inviting the Italian Government to rectify the situation. In 1995, the Italian pension system was reformed again, reducing the qualifying period to five years of contributions. However, this scheme only applies to new entrants on the labour market and so is not yet in force for a majority of the population. The committee of experts acknowledged the new scheme but continues to reiterate its observations about the old one. This indicates that the control bodies will only accept developments and amendments that are actually in force.

The European Code of Social Security (Revised)

The Revised Code uses the same basic definition of the contingency of old age and sets the same maximum pensionable age as that applied in the Code and the Protocol. However, the Revised Code widens the definition to include early pensions and deferred pensions. It also increases flexibility in order to allow contracting parties to overcome the social, economic and demographic challenges that have emerged since the drafting of the Code.

As with the Code and the Protocol, the Revised Code provides an exception to the maximum pensionable age of 65 years based on the demographic situation within the contracting party. However, unlike the Protocol this exception is applicable to all systems, whether they are based on employment, economic activity or residence. Furthermore, this exception is wider in the Revised Code than that initially provided under the Code, which focused only upon the demographic situation. The Revised Code allows the contracting parties to increase pensionable age beyond 65 years if so demanded by

demographic, economic or social reasons.⁷⁹ The Revised Code therefore provides considerably more flexibility to cope with social and economic problems such as the rising costs of an ageing population.

If a contracting party sets the pensionable age at 65 years or higher then, unlike the Code and Protocol, the Revised Code obliges that contracting party to allow certain groups of the population to retire at an earlier age. The contracting party concerned must ensure that a pension is provided before the age of 65 years for at least one of the categories of people listed below⁸⁰ (this follows the Revised Code's underlying philosophy of flexibility):

- People who have been engaged in hazardous activities: it is up to the contracting party to define what constitutes a hazardous activity and how long someone must have been performing this particular activity before they are entitled to an early pension. Common examples of hazardous employment include mining, furnace work or fishing;
- People who have been declared incapable of work, it is for the contracting party to decide the minimum degree of incapacity and the duration of incapacity (it need not therefore be permanent). For example, this may cover the situation where a 62-year-old employee suffers an accident that will render him incapable of work for at least two years; rather than pay invalidity benefit the contracting party may simply prefer to give this worker an advanced old age pension. If a contracting party has adopted the provisions of the Revised Code on invalidity (contained in Part IX) it will be deemed to have fulfilled its obligations under this article. This means that providing early pensions to incapacitated people only becomes relevant in connection with old age if the contracting party concerned has not ratified Part IX on invalidity;
- People who have been unemployed for at least one year and are approaching pensionable age: the precise age at which this early pension should be made available is left to the discretion of the contracting party. If the contracting party concerned has ratified Part IV on Unemployment then it is deemed to have fulfilled its obligations under this article because Part IV also obliges the provision of an early pension for those approaching pensionable age;
- People who have already fulfilled the qualifying period of contributions, employment or residence despite being younger than the fixed pensionable age: this recognises the hard work of those who entered the labour market at an early age.

Those who receive early pensions of this type are entitled to the same amount of old age pension as those who work until the normal pensionable age.

The flexibility of the Revised Code is further developed by allowing contracting parties with a pensionable age of 65 years or over to derogate from the provisions on early pensions in three situations:⁸¹

- Reduced early pension: an early pension may be paid at an age specified by the contracting party and reduced in accordance with the time over which the pension is paid early and any periods of employment, insurance or residence that the claimant has actually fulfilled;
- Deferred pension: people are allowed to continue to work beyond 65 years of age if:
 - they require more time to fulfil the minimum qualifying period (for example, they entered the labour market or took up residence in the territory of the contracting party when they were older);
 - they wish to obtain a higher benefit reflecting their extra period of continued employment, economic activity or residence;
- Part-time pension: whereby a person continues to work on a part-time basis whilst receiving a proportionally reduced pension. The pensioner may choose to reduce the hours of employment or activity in their existing occupation or may have retired from one occupation and begin another on a part-time basis. Part-time pensions may begin either before or after pensionable age.

These three potential derogations allow a contracting party the flexibility required to overcome some of the challenges facing old age pension systems in recent years. The reduced early pension allows contracting parties to discourage early retirement thereby increasing the number of people working and contributing to the social security system whilst simultaneously decreasing those who are claiming benefits. Deferred pensions allow pensioners to increase their qualifying periods and/or increase the amount of their pensions. By encouraging people to remain employed for longer, deferred pensions reduce the strain of the ageing population on social security budgets. Finally, part-time pensions allow

⁷⁹ Article 26, paragraph 2, of the Revised Code.

⁸⁰ Article 27, paragraph 1, of the Revised Code.

⁸¹ Article 27, paragraph 2, of the Revised Code.

people to retire gradually, passing on their skills to their replacements. It is widely believed that gradual retirement is better for a pensioner's physical and mental health, it also has the advantage of deferring the payment of pensions thereby reducing economic pressure on the social security budget.

Therefore, the Revised Code has simultaneously recognised the need of certain members of the population to take early pensions but has also provided the contracting parties with useful and flexible tools for the development of new and realistic policies in the field of old age pensions.

Chapter D5

Employment injury benefit

The European Code of Social Security

Definition of the contingency and the material scope: employment injury benefit, which is also provided for occupational diseases, is a rather special contingency within the Code. This is because it encompasses a number of different types of benefit, both long and short term in nature. The common link between these different types of benefit is that the cause of the contingency is directly related to a worker's employment duties. The minimum standards on employment injuries cover four different types of benefit,⁸² these are:

- Treatment of a morbid condition;⁸³
- Benefit for temporary incapacity for work leading to a suspension of earnings;
- Permanent full or total reduction in capacity for work; the contracting parties are free to set a minimum level of reduced capacity under which the claimant is not entitled to any benefit;
- Benefit in the case of loss of the breadwinner for the wife or child of someone who dies as a result of his employment duties; the contracting parties are free to make widow's benefit conditional on the widow being incapable of providing for herself.

The Code does not define what is meant by employment injury; this is left to the national legislation of the contracting party. The contracting party is therefore free to make important decisions such as whether travel between one's home and place of work should be covered and if so under which conditions, for instance travel of this kind may only be covered if the employee is using a mode of transport provided by the employer.

The personal scope: employment injury benefits only apply to workers and not to other economically active people such as the self-employed. The contracting parties must guarantee coverage of at least 50% of all employees and also the families of these workers as regards the benefits for survivorship.⁸⁴ The definition of a "child" may be found in Article 1 of the Code and is important in the provision of survivors' benefit. A child is someone either:

- Under school-leaving age; or
- Aged under 15 years.

The type of benefit: as explained above, there are four different types of benefit covered by this contingency.

The first is treatment of a morbid condition.⁸⁵ The minimum range of treatment that must be made available for work-related injuries and illnesses is greater than the minimum range of treatment required for non-work related injuries and illnesses. This can be illustrated by the table below, the "X" symbol indicates whether or not a particular treatment is expressly included within the minimum range of treatment:

Medical treatment	Injury/illness related to work	Injury/illness unrelated to work
Treatment by a general practitioner (GP)	X	X
Care by a specialist either as an in-patient or an out-patient	X	X
Home visits from GPs	X	X
Home visits from specialists	X	
Dental care	X	
Nursing care at home, in a hospital or other institution	X	
Maintenance in hospital	X	X
Convalescent homes and sanatoriums	X	
Essential pharmaceutical supplies prescribed by a medical or other qualified practitioner	X	X

⁸² Article 32 of the Code.

⁸³ For a definition of "morbid condition", see Chapter D1.

⁸⁴ Article 33 of the Code.

⁸⁵ Article 34 of the Code.

Provision and maintenance of prostheses, including dental and surgical prostheses as well as spectacles	X	
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The other three types of benefit are those for temporary incapacity for work, permanent incapacity and the death of the breadwinner. All three of these benefits should be provided as periodic cash benefits.⁸⁶ In addition, the contracting parties are obliged to co-operate with vocational rehabilitation services in order to enable incapacitated persons to reintegrate into the labour market.⁸⁷

Special provisions are made for benefits for permanent incapacity for work. Where the incapacity is only partial, the benefit paid may be proportionally reduced in order to reflect the actual loss of working capacity.⁸⁸

The long-term periodic benefits paid for a permanent reduction in working capacity and the loss of a breadwinner can both be converted into a lump sum.⁸⁹ This is possible where the reduction in working capacity is only small or where the authorities are satisfied that the money will be used properly and not wasted by the recipient on purely short-term improvements in life style.

The calculation method used for periodic cash benefits: benefits for treatment of a morbid condition are not provided in cash, whilst the other benefits are calculated according to the provisions in Part XI of the Code concerning the minimum amount of periodic benefit (see Chapter D10).

The conditions for entitlement to benefits: no minimum qualifying periods of employment or residence may be imposed upon entitlement to benefits for employment injuries. The contracting parties need only pay benefits to those whose employment accident or the cause of their occupational disease occurred within its territory, there is thus no obligation to provide benefits to someone who enters the state having already suffered an accident or contracted a disease.⁹⁰ This issue is dealt with under the social security co-ordination instruments (discussed in Chapter A3) in relation to the export of benefits, migrant workers and frontier workers.

The period of entitlement to benefit: all the benefits must be provided throughout the contingency; this also applies to the benefits for temporary incapacity which must be paid until the recipient either returns to work or is declared permanently incapacitated.⁹¹

The waiting period: only one type of benefit may be subject to a waiting period; benefits for short-term incapacity for work need not be paid for the first three days of the contingency.⁹²

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: the Protocol removes the right of contracting parties to make the widow's benefit conditional on the widow proving that she is unable to support herself.

The personal scope: the Protocol increases the minimum personal scope from 50% to 80% of all employees. The Protocol also redefines the concept of "child", which is important in relation to survivors' benefits. According to the Protocol, a child is either:

- A person under 16 years of age; or
- A person under school-leaving age or under 15 years provided that those who are continuing their education, working as apprentices or suffering from permanent incapacity are protected until they reach 18 years of age.

The type of benefit: no change.

The calculation method used for periodic cash benefits: no change.

⁸⁶ Article 36 of the Code.

⁸⁷ Article 35 of the Code.

⁸⁸ Article 36, paragraph 2, of the Code.

⁸⁹ Article 36, paragraph 3, of the Code.

⁹⁰ Article 37 of the Code.

⁹¹ Article 38 of the Code.

⁹² Article 38 of the Code.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

The committee of experts has adopted a strict interpretation of the rules on the duration of payments, insisting that these benefits are paid for the full duration of the contingency. In a resolution of 1997, the Committee of Ministers noted that the Greek system had amended its legislation concerning employment injuries and in doing so had abolished the partial pension paid to those whose reduced working capacity fell below 50%. Instead, these groups were paid a sickness benefit for up to 720 days. The Code provides that a reduced pension should be paid throughout the contingency. The Greek amendments had effectively turned a long-term pension into a short-term benefit. The result was a violation of the Code as a reduced pension was no longer available for partial incapacity. The Greek Government tried to defend its position by stating that the re-introduction of a partial pension was no longer financially viable.

The Committee of Ministers accepted that the social insurance funds in Greece were facing financial problems but it went on to reiterate that a long-term reduced pension should be made available to those with less than 50% incapacity. This shows that financial arguments are no excuse when it comes to violations of the Code. This represents an underlying principle of the Code that certain benefits have to be provided despite potential financial problems.

The European Code of Social Security (Revised)

The Revised Code builds upon the definition of the contingency provided in the Code and Protocol by introducing a list of twenty-nine occupational diseases, which are described in a schedule to Part VI. The Revised Code then gives the contracting parties a choice from three options:⁹³

- Recognise, under prescribed conditions, all of the diseases contained in the list. This means that the contracting party is free to establish a fixed list encompassing the diseases contained in the schedule to Part VI and only recognise the diseases on that list as occupational in origin. The contracting party is also free to prescribe conditions before the disease is recognised as related to work, for example the claimant may have to prove that they were exposed to a particular substance. It is even possible for states to prescribe minimum periods of exposure to certain hazards before a disease is recognised, for example ten years of exposure to noise above 100 decibels before acceptance of a claim for industrial deafness;
- Establish a definition of occupational disease which embraces all of the diseases listed in the schedule; this is a more open approach whereby a person will be able to claim a benefit if they can prove that their condition has been caused by work and fits within the definition created by the contracting party;
- Recognise, under prescribed conditions, at least five-sixths of the diseases listed in the annex and develop a general definition of occupational disease. The diseases on the list are automatically recognised as occupational diseases, provided that the claimant fulfils any conditions as regards exposure, etc., established by the contracting party. However, the list is not fixed and if the claimant can prove that their disease was caused by their employment then they may also claim a benefit. This system of a list combined with a general definition is sometimes called a “mixed system”.

As medical science progresses new links are found between diseases and working conditions, which means that new occupational diseases are constantly being discovered. The Revised Code ensures that its provisions remain up to date by allowing the committee designated by the [Committee of Ministers](#) to amend the list of occupational diseases. Although the designated committee may recognise a new occupational disease at any time, it is obliged by the Revised Code to review the list of occupational diseases at least every five years.⁹⁴

The Revised Code has succeeded in better defining the contingency of an occupational disease, thereby facilitating greater harmonisation within the social security systems of Europe. However, it has achieved this in a flexible fashion that allows contracting parties to choose between a range of options that are roughly equal in coverage.

⁹³ Article 34, paragraph 1, of the Revised Code.

⁹⁴ Article 34, paragraph 2, of the Revised Code.

Other notable developments under the Revised Code are the recognition of schemes based upon economic activity as opposed to just employment⁹⁵ and the creation of an obligation on the contracting parties to take measures in order to prevent employment injuries and occupational diseases.⁹⁶

⁹⁵ Article 35, paragraph 1, sub-paragraph b, of the Revised Code.

⁹⁶ Articles 42 and 43 of the Revised Code.

Chapter D6

Family benefit

The European Code of Social Security

Definition of the contingency and the material scope: the social risk covered by this contingency is the financial responsibility for the maintenance of children.⁹⁷ The concept of “child” is defined in Article 1 of the Code as including either those under school-leaving age or those under fifteen years of age; the choice is left to the contracting parties. The contingency is focused on the concept of derived rights for children; the benefit is paid to the worker or economically active individual who is responsible for the maintenance of the child. The right to benefit is not bestowed upon the children themselves.

The personal scope: the derived nature of the rights is further illustrated by the definition of personal scope. Where entitlement is based upon one’s status as an employed person, at least 50% of all employees must be covered and protection ensured for their children. Where entitlement is based upon the performance of economic activity, then at least 20% of all residents must be provided benefits in respect of their children.⁹⁸ It should be noted that “family” is considered as a contingency or social risk. This means that the 50% of employees or 30% of residents covered need not actually have children but be covered by the scheme if they were to have children. There is no provision for systems where entitlement is based upon residence.

The type of benefit: the Code provides for cash benefits and/or benefits in-kind.⁹⁹ Cash benefits involve a periodic payment to the person who provides for the children. Benefits in-kind include the provision of food, clothing, holidays, housing and domestic help for families.

The calculation method used for periodic cash benefits: unlike the other contingencies covered by the Code, family benefits are not calculated in accordance with the provisions in Part XI thereof but are dealt with in a special way. The minimum amount is established in three steps:

- Step one: calculate the monthly/weekly wage of the ordinary adult male labourer; guidance on how this can be done is found in Article 66 of the Code;
- Step two: multiply this amount by the number of children of all the residents in the contracting state;
- Step three: calculate 1.5% of this amount and that is the total amount that the contracting party must spend on all of the protected children in its territory.

No minimum level of benefit is set for each individual recipient, instead a minimum amount of expenditure is established for all entitled persons within the territory of the contracting party. This allows the contracting party to provide just in-kind benefits or a combination of cash and in-kind benefits.

The conditions for entitlement to benefits: the maximum qualifying period is established as either one month of employment/contributions or six months of residence.¹⁰⁰

The period of entitlement to benefit: the benefit is paid throughout the contingency¹⁰¹ and so either until school-leaving age or the age of 15 years, whichever is chosen by the contracting party

The waiting period: no waiting periods for benefits are permitted.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: the protocol redefines the concept of “child”, as either:

- A person under 16 years of age; or
- A person under school-leaving age or under 15 years provided that those who are continuing their education, working as apprentices or suffering from permanent incapacity are protected until they reach 18 years of age.

⁹⁷ Article 40 of the Code.

⁹⁸ Article 41 of the Code.

⁹⁹ Article 42 of the Code.

¹⁰⁰ Article 43 of the Code.

¹⁰¹ Article 45 of the Code.

The personal scope: schemes based on employment have to ensure coverage for at least 50% of all employees according to the Code; the Protocol increases this to 80%. The minimum personal scope of schemes that are based on economic activity is also increased by the Protocol from 20% to 30% of all residents.

The type of benefit: no change.

The calculation method used for periodic cash benefits: under the Code 1.5% of the wage of an ordinary male labourer is used as a benchmark for the minimum amount of total spending on family benefit; the Protocol increases this to 2%.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

One of the problems that has occurred in relation to assessing the level of family benefit is the use of estimated statistics. The committee of experts will not base its conclusions on estimated values but will demand access to the actual figures. Although this may require some contracting parties to invest time and money in the collection of data that would not otherwise have been available or necessary, it is the only way to ensure uniform and proper compliance with the Code or Protocol in every contracting party.¹⁰²

The European Code of Social Security (Revised)

The Revised Code makes a number of noteworthy changes to the Code and Protocol. Firstly, it shifts the emphasis away from derived rights and on to individual rights. So, instead of referring to personal coverage extending to employees or the economically active population, the Revised Code refers to the compulsory coverage of “*children of employees*”, “*children of the economically active persons*” and “*children of residents*”.¹⁰³

Secondly, the personal coverage of the Code has been extended by the Revised Code to include children of residents.¹⁰⁴ This is an important development. The Code did not recognise the coverage of residents. However, recent trends in most European states have seen the emergence of more and more family benefits based upon residence rather than employment or economic activity.

Thirdly, the Revised Code expressly obliges schemes where entitlement is based upon employment or economic activity to cover children whose parents are retired pensioners or unemployed.¹⁰⁵

Finally, the Revised Code has made the assessment of the amount of benefit more flexible and easier to calculate. It still treats the calculation of family benefits differently from the other contingencies but it gives the contracting parties a choice between:

- Ensuring total expenditure on family benefits is at least equal to 1.5% of gross domestic product; or
- 3% of either the minimum wage or the wage of an ordinary labourer multiplied by the total number of persons protected (this amount was roughly equal to 1.5% under the Code and 2% under the Protocol).

¹⁰² For an example, see the resolution of the Committee of Ministers on the application of the European Code of Social Security by Italy, 2000.

¹⁰³ Article 46 of the Revised Code.

¹⁰⁴ Specifically, Article 46, paragraph 3, of the Revised Code.

¹⁰⁵ Article 49 of the Revised Code.

Chapter D7

Maternity benefit

The European Code of Social Security

Definition of the contingency and the material scope: this part is concerned with pregnancy, delivery and the effects thereof. It provides minimum standards for medical services as well as periodic cash benefits to compensate for suspended earnings.¹⁰⁶

The personal scope: the contracting party has a choice as regards the minimum standards for personal cover,¹⁰⁷ it must either:

- Prescribe categories of employees which are covered for the contingency of maternity which amount in total to at least 50% of all employees. It must then provide cash and medical benefits to all women who belong to these prescribed categories and medical benefits alone to the wives of the men engaged in these prescribed categories; or
- Prescribe categories of economically active people which are covered for the contingency of maternity and which amount in total to at least 20% of all residents. It must then provide cash and medical benefits to all economically active women who belong to these prescribed categories of economic activity and medical benefits to the wives of the men engaged in these activities.

No provision is made for coverage on the basis of residency alone; maternity is therefore identified as a contingency purely based upon one's status as an employee, economically active person or someone who derives their benefit from one of these groups.

The type of benefit: the contracting states must provide the following medical benefits or services.¹⁰⁸

- Pre-natal, delivery and post-natal care by medical practitioners or qualified midwives; and
- Hospitalisation, which includes the provision of bed and board if necessary.

The reader should note that these medical benefits are also provided for under Part II of the Code that deals with medical care. This overlap of coverage ensures a basic level of medical protection during maternity for women in those contracting parties that ratify Part II on Medical Care but do not choose to ratify Part VIII on Maternity. States may be reluctant to ratify Part VIII because of the obligation to pay cash benefits.

The contracting parties must also use appropriate means to encourage women to take advantage of the medical services available to them. This may involve, *inter alia*, campaigns to encourage birth in hospitals or to encourage the use of qualified midwives.¹⁰⁹

As regards the suspension of earnings, a periodic cash benefit must be provided.¹¹⁰

The calculation method used for periodic cash benefits: the periodic cash benefit should be assessed according to the provisions in Part XI of the Code which sets minimum standards on the amount and calculation of benefit (see Chapter D10). It is possible that the amount of the benefit will vary over the duration of the contingency, for example €100 per week before delivery and €150 per week afterwards. This is allowed by the Code provided that the average benefit paid is higher than the minimum provided for in Part XI. There is no provision for the allocation of means tested benefit, entitlement to which is based upon residence.

The conditions for entitlement to benefits: both medical services and cash benefits for the suspension of earnings may be subject to such a qualifying period of residence or employment as may be appropriate to avoid abuse.¹¹¹ These qualification periods must be fulfilled by employed or otherwise economically active women and by employed or otherwise economically active men who wish to obtain derived rights for their wives. The contracting parties are free to determine what constitutes an abuse in this situation but the supervisory mechanism of the Code is entitled to determine if

¹⁰⁶ Article 47 of the Code.

¹⁰⁷ Article 48 of the Code.

¹⁰⁸ Article 49 of the Code.

¹⁰⁹ Article 49, paragraph 4, of the Code.

¹¹⁰ Article 50 of the Code.

¹¹¹ Article 51 of the Code.

the periods established are excessive or not. For instance, states may wish to protect the delicate financial balance between social security revenue from income tax or social security contributions, on the one hand, and social security expenditure on the other. This may only be done by ensuring that all recipients make a minimum contribution to the system before they claim from it. Allowing immediate entitlement to benefits may allow people to manipulate the system through activities such as social tourism, the concept of social tourism is defined in Chapter D2.

The period of entitlement to benefit the benefits should be paid throughout the contingency but may be subject to a maximum duration of no less than twelve weeks in the case of periodic benefits.¹¹²

The waiting period: no waiting period may be imposed before benefits are granted.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: no change.

The personal scope: the minimum personal coverage is increased by the Protocol both in relation to systems based on employment and those based on economic activity; this increases from 50% to 80% of all employees and from 20% to 30% of all residents respectively.

The type of benefit: the Protocol adds to the range of medical care provided to women during the pre-natal, delivery and post-natal periods. According to the Protocol, pharmaceuticals now have to be provided but the Protocol allows co-payments to be charged for these pharmaceutical products and limits the maximum amount of co-payment to 25% of the cost. For those systems that have fixed co-payments, rather than percentages, the total amount of co-payments paid by all those covered by the contingency of maternity in the territory shall be compared with the total spending by the contracting party on drugs for these women within a set time period. The result should be a percentage of no more than 25% of total expenditure.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

The medical services stipulated by the part of the Code on maternity must not be subject to co-payments. However, those services not specified by the Code may be subject to a charge. This is illustrated by the situation in the Netherlands before 1995 when the Dutch system of health care used to impose a fixed co-payment of 39.40 guilders for all treatment obtained either at home or in hospital. This co-payment applied regardless of whether the treatment was related to illness or to pregnancy.

The provision of care at home was ensured by district nurses who were not covered under the Protocol and therefore a co-payment could be levied upon their services. Treatment in a hospital was covered by the Protocol and so should not have been subject to a co-payment. The Dutch Government insisted, firstly, that it did not want to make the decision about where to give birth, namely either in a hospital or at home, dependent upon financial considerations. Secondly, it stressed that in fact it wanted to encourage women to give birth at home. If co-payments were charged for care at home but not for care in a hospital this would defeat these two goals. The committee of experts did not accept this argument and the Committee of Ministers invited the Dutch Government to drop the co-payments with respect to hospital treatment.¹¹³ The Netherlands complied with this request by exempting women from co-payments towards medical treatment for confinement that is prescribed by a doctor, regardless of whether it is provided in hospital or at home.

The European Code of Social Security (Revised)

The express overlap between the medical benefits provided under Part II of the Code on Medical Care and those provided under Part VIII on Maternity does not feature in the Revised Code. This implies that should a contracting party only ratify Part II of the Revised Code on Medical Care and not Part VIII on Maternity it will not be obliged to provide medical treatment specifically designed for pregnant women and women who have just given birth. This development serves to

¹¹² Article 52 of the Code.

¹¹³ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands, 1988.

improve the legal coherence of the Revised Code by clearly separating different contingencies.

The Revised Code substantially increases the range of medical treatment that must be provided to women before during and after childbirth. For example, it expressly includes the following additional treatments:¹¹⁴

- Necessary pharmaceutical supplies;
- Dental treatment and prosthesis;
- Medical rehabilitation;
- The provision and maintenance of prosthesis and other medical aids; and
- Transport, as prescribed by the contracting party.

¹¹⁴ Article 53 of the Revised Code.

Chapter D8

Invalidity benefit

The European Code of Social Security

Definition of the contingency and the material scope: this contingency covers the inability to perform gainful activity and is likely to be permanent or persist after the exhaustion of sickness benefits. The minimum degree of reduced capacity before a benefit is paid is left to the discretion of the contracting party. The incapacity is measured against the claimant's ability to perform "any gainful activity" and not just the occupation they were engaged in prior to the injury or disease that caused their disability.¹¹⁵

The personal scope: for those schemes where entitlement is based on employment, at least 50% of all employees must be covered. If entitlement under the scheme is conditional upon the performance of some economic activity then it must cover at least 20% of all residents. Finally, if the scheme pays benefits to invalid residents who receive less than a set amount of income, the benefit must be paid to all residents who do not have means above this set level. This set level of income is controlled by the Code in Part XI.¹¹⁶

The type of benefit: the benefit provided should be a periodic cash benefit and not a lump sum.¹¹⁷

The calculation method used for periodic cash benefits: the minimum amount of benefit is determined in accordance with Part XI on the calculation of periodic cash benefits. The amount of benefit can be reduced as explained under Chapter D10 below.

The conditions for entitlement to benefits: as with the Part of the Code on Old Age Benefits provision is made for a combination of full and partial pensions:

- The full pension should be paid under systems based on employment after fifteen years of contributions or ten years of residence at the most.¹¹⁸ Full pensions based on economic activity should be paid at the latest after three years of contribution provided that while the claimant was of working age they complied with the prescribed yearly average number of contributions.¹¹⁹ The minimum number of contributions per year is left to the discretion of the contracting party. For example, the claimant may be obliged to contribute for three years, making an average of at least forty-six weekly contributions over this period;
- A partial pension, which is lower than the full pension, must be provided under employment-based systems after five years of contributions or residence¹²⁰ and under the economic activity system after three years provided that the claimant has completed three years of contributions and paid at least half of the required number of contributions needed for the full pension.¹²¹

This system of full or partial pension may be replaced in systems based upon either employment or economic activity by a single pension paid at a rate of ten percentage points less than that required under Part XI of the Code provided that this pension is paid after five years of contribution, employment or residence.¹²²

The period of entitlement to benefit: the benefit must be paid throughout the contingency or until the recipient either becomes entitled to an old age pension or recovers their capacity for work.¹²³

The waiting period: no waiting period may be imposed on the granting of benefits for invalidity.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope: the Code allows the contracting party to prescribe the minimum

¹¹⁵ Article 54 of the Code.

¹¹⁶ Article 55 of the Code.

¹¹⁷ Article 56 of the Code.

¹¹⁸ Article 57, paragraph 1, sub-paragraph a, of the Code.

¹¹⁹ Article 57, paragraph 1, sub-paragraph b, of the Code.

¹²⁰ Article 57, paragraph 2, sub-paragraph a, of the Code.

¹²¹ Article 57, paragraph 2, sub-paragraph b, of the Code.

¹²² Article 57, paragraph 3, of the Code.

¹²³ Article 58 of the Code.

degree of reduced working capacity before a benefit is paid. The Protocol states that this prescribed limit must be no more than two-thirds.

The personal scope: schemes based on employment have to ensure coverage for at least 50% of all employees according to the Code; the Protocol increases this to 80%. The minimum personal scope of schemes that are based on economic activity is also increased by the Protocol from 20% to 30% of all residents.

Under the Code benefits are paid to those covered by employment based schemes, schemes based on economic activity and also schemes that applied to all residents who suffered from the contingency and have means below a certain level. The Code allows contracting parties to choose freely between these various methods of organisation. The Protocol, however, makes the selection of the third option, schemes based on residence and means tests, only available to states that provide non-means-tested benefits to prescribed classes of employees or the economically active that cover at least 50% of all employees or 30% of all residents respectively. Therefore, the option of relying purely upon a system based on residence and means tests has been removed by the Protocol.

The type of benefit: the Protocol creates a new obligation upon the contracting parties to facilitate the rehabilitation and re-employment of incapacitated individuals through the provision of facilities such as labour exchanges, vocational training and assistance in moving to other districts in order to find work.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

Some pension systems determine pension entitlement by adding the periods during which the claimant has actually contributed to the scheme to credited periods during which the claimant was not actually contributing for a recognised reason. Credited periods are often provided for periods of absence from work due to child care, military service, further education or unemployment. In the case of invalidity, some systems give the claimants credits for all the time between the date on which they became incapacitated and pensionable age. For instance, a person is diagnosed as permanently incapacitated at the age of 35 years of age and old age pensions are usually payable at the age of 65 years. In this case, the claimant is credited with an extra thirty years which is added to any periods of actual contributions they made before their injury as well as any credited periods they may have acquired before disability. Systems that provide credits in this way will therefore require longer qualifying periods before the granting of an invalidity benefit. One example of such a system could be found in Germany where periods were credited for the time between the age at which the person was rendered permanently incapable of work and that person's 60th birthday. For this reason the qualifying period for invalidity benefit in Germany was set at thirty-five years of actual and credited periods whereas the Code provides for a maximum of fifteen years of actual contributions. The committee of experts accepted that in reality the qualifying period in Germany was structured in such a way as to fulfil the obligations established by the Code and Protocol.¹²⁴ However, Germany had begun to reduce the number of credited periods, for example reducing the maximum amount of freely credited periods for education from seven years to three years.¹²⁵ It also reduced the relative value of the credited periods as compared to the periods of actual contribution so that credits for vocational training (previously subject to a maximum of forty-eight months then lowered to thirty-six) were treated as 75% of the value of actual contributions (previously 90%). This reduction in the overall level and value of credited periods attracted the attention of the Committee of Ministers in its 1997 resolution.

The German Government counteracted criticism from the Committee of Ministers by pointing to the areas where the maximum amount and value of credited periods had been increased, especially with respect to women in the labour market. For example, greater recognition of the periods involved in raising children.

This illustrates that the committee of experts will adapt its interpretation of the standards in the Code to accommodate those systems that operate in a slightly different way to that envisaged by the Code. This will be done provided that the Committee of Ministers is assured that the standards achieved by these systems are and remain equal to or better than those established in the Code.

¹²⁴ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Germany, 1997.

¹²⁵ Although it was made possible for insured persons to purchase extra credited periods in order to make up the total amount of time credited for education to seven years.

The European Code of Social Security (Revised)

As with the Code but unlike the Protocol, the Revised Code does not set any limits on the degree of incapacity that must be suffered before a benefit is paid. It leaves the minimum degree of incapacity to the discretion of the contracting party.¹²⁶

The Revised Code, unlike either the Code or the Protocol, makes special provisions for those who have been incapacitated by a congenital disability or invalidity arising before school-leaving age.¹²⁷ Technically speaking, these people have never worked or performed any economic activity and may have been excluded from schemes where entitlement is based upon employment or economic activity. The Revised Code increases the range of benefits that must be provided by the contracting parties to include cash allowances for education or benefits in-kind in the form of assistance at school or work for this group of people.¹²⁸

The Revised Code also obliges contracting parties to provide some form of special benefit for those who are in need of constant attendance and assistance from another person.¹²⁹ This benefit could take a number of forms, it could be paid as a supplement to existing cash benefits, it could be provided as a separate benefit or it could even be supplied as a benefit in-kind through the provision of a home help. The precise scope and conditions of this benefit are left to the discretion of the contracting parties.

¹²⁶ Article 58, sub-paragraphs a, b and c, of the Revised Code.

¹²⁷ Article 58, sub-paragraph c, of the Revised Code.

¹²⁸ Article 60, paragraph 4, of the Revised Code.

¹²⁹ Article 60, paragraph 8, of the Revised Code.

Chapter D9

Survivors' benefit

The European Code of Social Security

Definition of the contingency and the material scope: this part of the Code is concerned with the death of a breadwinner, which leaves that person's wife and/or children without any means of support.¹³⁰

The type of benefit: periodic cash benefits should be provided and not lump sums.¹³¹

The calculation method used for periodic cash benefits: the minimum amounts of benefit may be assessed by any of the three options provided in Part XI of the Code, though they may be proportionally reduced according to the provisions described below under Chapter D10 below.

The conditions for entitlement to benefits: contracting parties are free to refuse payment of benefit to widows unless it is proven that these women are incapable of supporting themselves.¹³² The contracting party is free to impose minimum periods of marriage on widows who have no children from the deceased.¹³³ This allows the state to avoid benefit payments in cases of marriage for money.

As with the Part of the Code on Old Age Benefits, survivors may be entitled to full or partial pensions:

- The full pension should be paid under systems based on employment after fifteen years of contributions or ten years of residence by the deceased at the most.¹³⁴ Full pensions based on economic activity should be paid at the latest after three years of contribution provided that while the deceased was of working age they complied with the prescribed yearly average number of contributions.¹³⁵ The minimum number of contributions per year is left to the discretion of the contracting party. For example, the claimant may be obliged to contribute for three years, making an average of at least forty-six weekly contributions over this period;
- A partial pension, which is lower than the full pension, must be provided under employment based systems after five years of contributions or employment by the deceased¹³⁶ and under the economic activity system after three years provided that the deceased has completed three years of contributions and paid at least half of the required number of contributions needed for the full pension.¹³⁷

This system of full or partial pension may be replaced in systems based upon either employment or economic activity by a single pension paid at a rate of ten percentage points less than that required under Part XI of the Code. The conditions for this pension are that the pension is paid after no more than five years of contribution, employment or residence.¹³⁸

A proportional reduction of the amount of benefit provided for in Part XI of the Code is possible where the qualifying period is over five years but less than fifteen years of employment or contributions.¹³⁹ For example, the benefit is reduced by 1/15 for every year that the qualifying period falls short of that required for a full pension after fifteen years. After five years this means the pension is reduced to 5/15 or 1/3 of the full pension, after ten years it is reduced to 10/15 or 2/3 of the full pension.

The period of entitlement to benefit: the benefits must be provided throughout the contingency.¹⁴⁰ For wives, this means throughout their widowhood, which will come to an end upon their death or upon remarriage. Furthermore, the benefit may be suspended if the widow lives with another man as his wife.¹⁴¹

¹³⁰ Article 60, paragraph 1, of the Code.

¹³¹ Article 62 of the Code.

¹³² Article 60, paragraph 1, of the Code.

¹³³ Article 63, paragraph 5, of the Code.

¹³⁴ Article 63, paragraph 1, sub-paragraph a, of the Code.

¹³⁵ Article 63, paragraph 1, sub-paragraph b, of the Code.

¹³⁶ Article 63, paragraph 2, sub-paragraph a, of the Code.

¹³⁷ Article 63, paragraph 2, sub-paragraph b, of the Code.

¹³⁸ Article 63, paragraph 3, of the Code.

¹³⁹ Article 63, paragraph 4, of the Code.

¹⁴⁰ Article 64 of the Code.

¹⁴¹ Article 68, sub-paragraph j, of the Code.

For orphans, the contingency ends when they are no longer children. The concept of “child” is defined in Article 1 of the Code and allows states to choose either those under school-leaving age or those aged under 15 years.

The waiting period: no waiting period is permissible before the payment of survivors’ benefits.

The Protocol to the European Code of Social Security

Definition of the contingency and the material scope : the Protocol redefines the concept of “child”, as either:

- A person under 16 years of age; or
- A person under school-leaving age or under 15 years provided that those who are continuing their education, working as apprentices or suffering from permanent incapacity are protected until they reach 18 years of age.

The personal scope: the minimum personal coverage is increased by the Protocol both in relation to systems based on employment and those based on economic activity; this increase is from 50% to 80% of all employees and from 20% to 30% of all residents respectively.

Under the Code, benefits are paid to those covered by employment-based schemes, schemes based on economic activity and also schemes that apply to all residents who suffer from the contingency and have means below a certain level. The Code allows contracting parties to choose freely between these various methods of organisation. The Protocol, however, makes the selection of the third option, schemes based on residence and means tests, only available to states that provide non-means-tested benefits to prescribed classes of employees or the economically active that cover at least 50% of all employees or 30% of all residents respectively. Therefore, the option of relying purely upon a system based on residence and means tests is removed by the Protocol.

The type of benefit: no change.

The calculation method used for periodic cash benefits: no change.

The conditions for entitlement to benefits: no change.

The period of entitlement to benefit: no change.

The waiting period: no change.

Interpretation

The Code (as amended by the Protocol) allows contracting parties to make entitlement to widows’ pension conditional on the widow being incapable of self-support. The committee of experts has advanced a wide definition of “incapable of self-support”. The Dutch legislation provides that a widow’s pension will only be paid if the widow:

- Is an invalid;
- Is raising a child of the deceased; or
- Was born before 1 January 1950.

Given that the benefit is granted until a person reaches 65 years of age, when it is converted into an old age pension, this means that the latter category will cease to exist in 2015. The committee was concerned whether women who are neither caring for dependent children nor invalid were assumed to be capable of self-support regardless of their age or experience. For example, what about a 62-year-old widow who has been a housewife for the last 40 years, is she assumed to be capable of self-support just because she is not an invalid and is not caring for a child? The Committee was also concerned about the retraining etc given to widows in an effort to get them back to work, and especially interested in any retraining grants paid to them. This illustrates that the committee will give careful consideration to any discretion given to contracting states as regards the scope of conditions.

The European Code of Social Security (Revised)

Firstly, the Revised Code promotes gender equality by replacing the word “wives” used in the Code and Protocol with the term “spouses”.¹⁴² The concept of spouse includes both husbands and wives. The Revised Code also makes amendments to the Code and Protocol to reflect developments in the labour market. When the Code was first drafted the traditional role of women was to remain at home while their husbands earned a living, as a result by the time their husband died any employment skills they may have acquired in their youth had mostly disappeared. However, in recent years this has changed, more women continue to work after marriage and women in general have been encouraged to become much more independent. Social security systems are now reluctant to maintain widows on a long-term basis. For this reason, the

¹⁴² Article 64 of the Revised Code.

Revised Code allows contracting parties to set a minimum age for the payment of survivors' benefits,¹⁴³ this will ensure that young, potentially active women are encouraged to return to the labour market while older widows, whose skills may well make it difficult to find work, are still protected by a survivors' pension. However, special provisions have been made by the Revised Code in order to avoid disadvantaging surviving spouses who really were dependent upon the deceased person and who, following that persons death, are not going to be able to readily reintegrate into the labour market. These special provisions¹⁴⁴ declare that a survivors' benefit should be paid regardless of age if the survivor is:

- Unfit for work; or
- Caring for a dependent child

The Revised Code appreciates that those who are not entitled to a survivors' pension because they are too young, fit for work and have no children, may still need some assistance in integrating into the labour market. Therefore, provision is made for a temporary benefit to be paid to surviving spouses, this is called a 'resettlement allowance' by the Revised Code.¹⁴⁵ The terms, conditions, duration and amount of resettlement allowance are left to the discretion of the contracting party.

¹⁴³ Article 64, paragraph 2, of the Revised Code.

¹⁴⁴ Article 64, paragraph 3, of the Revised Code.

¹⁴⁵ Article 66, paragraph 3, of the Revised Code.

Chapter D10

Standards to be complied with by periodical payments: calculation of periodic benefits

The European Code of Social Security

Useful definitions: before explaining how the Code applies minimum standards to the amounts of periodic benefit it is important to clarify some important distinctions:

- **Cash benefits versus benefits in-kind:** as the phrase implies cash benefits involve the payment of money whereas benefits in-kind involve the direct provision of goods and services;
- **Periodic benefits versus lump-sum benefits:** periodic benefits are paid regularly, namely every month, week, etc. Lump-sum benefits are one off payments such as that given as a birth grant upon the delivery of a baby;
- **Income replacement versus cost compensation benefits:** income replacement benefits replace income that is lost due to the suspension or permanent cessation of earnings from economic activity caused by risks such as unemployment or old age. Cost compensating benefits are paid to reduce the financial burden of risks such as raising a family or receiving medical treatment;
- **Earning-related versus flat-rate benefits:** cash benefits may be earnings related or flat rate. Earnings-related benefits reflect the earnings a person received from economic activity before they were affected by a particular contingency. Flat-rate benefits are paid in the same amount to all recipients regardless of how much their recipient earned before they fell victim to the contingency. Of course, cash benefits may also be based on factors other than previous earnings such as the period over which someone has paid social security contributions; in this case those who have contributed over the same period receive the same benefit so in this sense they are “variable flat-rate benefits based on periods of insurance”.

The following definitions are also of use in understanding the operation of the system of assessing periodic cash benefits:

- **Ceiling:** this is a cap establishing a maximum amount. Ceilings are applied to earnings-related benefits whereby earnings are not taken into consideration above a certain amount; this serves to control the amount of benefit;
- **Means test:** this assesses the amount of income available to an individual and may be used to determine entitlement to benefits and/or the amount of benefits. A distinction should be drawn between income testing which takes into account any income, whether it is from work, self-employment, property, investments, etc., on the one hand, and asset testing which looks at the value of assets such as houses, savings, property, land, etc., on the other. The definition of means test varies from one state to another, sometimes it is used to describe purely income testing in others it describes income and asset testing;
- **Rate of replacement:** this describes the extent to which the social security benefit replaces lost earnings or the costs of things like medical care. If a benefit is equal to half of the recipient’s previous earnings then the rate of replacement in this instance is 50%.

Assessing the amount of benefits: three models of evaluation: the Code aimed to lay down minimum levels of benefit in order to ensure that those it protects receive an adequate standard of living. The minimum levels of benefit had to be fairly applied to every type of system so that all contracting parties have to fulfil equivalent minimum standards. The standard of living is also different in every member state; these variations in the amount of wages and the cost of everyday items from country to country meant that minimum benefit amounts could not be set in terms of euros, marks or dollars. The challenge was the development of a system that respected the diversity of the organisation of social security as well as being relative to the tremendous range of living standards. This challenge was met by ILO Convention No. 102, which became the model for the Code.

The method of assessment used in the Code is based on three models of benefit provision, each of which is given its own article in the Code. The first model assesses benefits based upon the previous earnings of the recipient (or of the breadwinner in the case of survivors’ benefits) and is contained in Article 65 of the Code. The second model assesses flat-rate benefits and is described in Article 66 of the Code. The third method applies to benefits that are provided to all residents who suffer from a contingency specified in the Code and have means below a set level. This type of benefit and the permissible restrictions on the levels of means can be found in Article 67 of the Code. States are therefore given the choice of three basic models by which to have the amounts of their periodic benefits assessed.¹⁴⁶ These three models allow

¹⁴⁶ However, the model based on residence and means is not available for all the contingencies covered in the Code; it cannot be used for employment injury benefits or maternity benefits.

the Code to apply equivalent standards to the different types of social security systems in operation in the contracting parties.

Assessing the amount of benefit: the standard beneficiary: the Code aims to establish standards that are equivalent for all types of social security systems, this means it must assess the various schemes using common models. This is the motivation behind the development of the standard beneficiary. The standard beneficiary varies from one contingency to another with the objective of reflecting the typical recipient of the benefit. For sickness, unemployment and invalidity this is a man with a wife and two children. For old age benefits this is a man and his wife who is also of pensionable age, for maternity it is the pregnant woman and for survivors' benefits it is a widow and two orphan children.¹⁴⁷ These were seen as the typical recipients at the time ILO Convention No. 102 was devised. However, family structures since then have changed and this is reflected in the Revised Code. One of the reasons for taking the position of other family members into consideration is the fact that in the early 1950s many of the rights of women and children were derived from the breadwinner in the family and reflected through supplements for dependant family members that were often attached to other benefits.

Provisions are made within the Code that oblige contracting parties to provide benefits to those who are not standard beneficiaries that bear a reasonable relation to those that are given to the standard beneficiaries.

Assessing the amount of benefit: the minimum amounts: the minimum amounts of benefit are set down in a schedule to Part XI. They are expressed as percentages and vary from contingency to contingency. Each of the three models of evaluation describes the basis against which the amount of benefit will be assessed, for example the previous earnings of the recipient. The amount of benefit actually paid plus any family benefits given to the standard beneficiary divided by the amount determined by one of the three models of evaluation plus any family benefit paid must be equal to or greater than the percentage expressed in the schedule.

The first model: earnings-related benefits (Article 65): the basis for evaluation in this model is the previous earnings of the recipient (or the deceased person in the case of survivors' benefits) plus any family benefits received. However, the contracting party may not wish to consider all of the recipient's previous earnings in the calculation of their benefits. This could lead to very well paid persons receiving very high rates of benefit even though they are more likely to have higher savings and more assets than most of the population on lower incomes. Higher paid persons are also more capable of making private pension arrangements. Some states may feel that provision of very high benefits to those who previously earned very high incomes is against the basic principles of solidarity that were the original bench mark for the European welfare state. It is for this reason that many countries apply a ceiling to the earnings that will be taken into consideration when assessing benefit levels. The Code accepts that ceilings may be imposed on the amounts of previous earnings taken into consideration when calculating benefits and states that the ceiling may be no lower than that of the normal wage of a skilled manual male employee in the contracting party concerned.

Article 65 goes on to define a skilled male manual worker in one of three ways:

- The first option is a fitter or turner in the manufacture of machinery other than electrical machinery;
- The second refers to the international standard industrial classification of all economic activities produced by the Economic and Social Council of the United Nations.¹⁴⁸ This document is contained in Addendum 1 of the Code and provides a standardised classification of all industrial occupations; it is divided into divisions such as "mining and quarrying" and then subdivided into major groups such as "coal mining". In order to identify a skilled male manual worker, one must first isolate the division which contains the largest number of economically active protected males in the country. Then one should identify the major group within that division that contains the largest number of protected economically active males. Members of this major group then constitute a skilled manual worker. The wage of this worker shall be the median rate applicable to the major group in question;
- The third refers to a person whose earnings are equal to 125% of the average wages of all the protected persons on the territory of the contracting party.

Where the level of wages varies from one region to another, the contracting party may rely upon these different amounts when the amount of benefit is assessed.

Model two: flat-rate benefits (Article 66): where the benefits are provided as a flat-rate benefit unrelated to the previous earnings of the recipient (or the deceased in cases of survivors' benefit) the marker against which benefits shall be evaluated is that of the wage of the ordinary adult male labourer. The contracting states may choose from two definitions of the ordinary male labourer:

¹⁴⁷ See schedule to Part XI of the Code, reproduced below.

¹⁴⁸ Produced at its seventh session on 27 August 1948.

- The first is an unskilled labourer in the manufacture of machinery other than electrical machinery;
- The second, as with Article 65 described above, refers to the international standard industrial classification of all economic activities. In order to determine who is an ordinary male labourer one must first isolate the division which contains the largest numbered of unskilled economically active protected males in the country. Then one should identify the major group within that division that contains the largest number of protected economically active males. Members of this major group then constitute an ordinary male labourer. The wage of this worker shall be the median rate applicable to the major group in question.

The important difference between these definitions and those used above for earnings-related benefits is that these focus upon unskilled rather than skilled labour.

As with the model based upon earnings-related benefits this model provides for regional variations.

Model three: means-tested benefits (Article 67): this model applies to those systems that protect all residents against a contingency but only pay benefits if the means of those effected by the contingency fall below a specified amount. This means that the means-tested system must be set down in national legislation so that it provides all beneficiaries who fulfil the conditions with an objective right to the benefit. Entitlement to and the amount of the benefit must not be subject to discretion.

This model allows a differential benefit to be provided. A differential benefit is one that varies with the amount of income received by the recipient; it essentially guarantees a minimum income. Thus, if the minimum income is established as €50 per week and the recipient has a weekly income of €20 then they would be paid a benefit of €30 per week. Article 67 provides that the total income received by the standard beneficiary should be sufficient to maintain him and his family in health and decency. In any event it should not be lower than that provided for as a minimum benefit in respect of the evaluation indicator described in Article 66.

Minimum levels of benefit: the schedule to Part XI: as explained above, the minimum levels of benefit are expressed as percentages in a schedule to Part XI. The schedule is used in this way. The amount of benefit provided for each contingency for the standard beneficiary plus the amount of family benefit on top is compared with one of the evaluation bases established in the three models above plus any family benefits to which the standard beneficiary is entitled. This can be illustrated by the following formula:

$$(\text{Benefit} + \text{family benefits} / \text{evaluation base} + \text{family benefits}) \times 100$$

The resulting percentage must be at least equal to that provided in the schedule.

The schedule sets the following minimum percentages:

Contingency	Standard beneficiary	Minimum %
Sickness	Man with wife and two children	45
Unemployment	Man with wife and two children	45
Old age	Man with a wife of pensionable age	40
Employment injury:		
Temporary incapacity	Man with wife and two children	50
Permanent total incapacity	Man with wife and two children	50
Survivors'	Widow with two children	40
Maternity	Woman	45
Invalidity	Man with wife and two children	40
Survivors'	Widow with two children	40

Regular readjustment: as well as setting minimum levels of benefit, Part XI also obliges states to review and adjust the rates of old age, invalidity and survivors' pension in view of any substantial changes in the general level of earnings brought about by changes in the costs of living. This obligation only applies to systems that provide earnings-related benefits¹⁴⁹ or flat-rate benefit,¹⁵⁰ it does not apply to benefits provided after means testing.

¹⁴⁹ Article 65, paragraph 10, of the Code.

¹⁵⁰ Article 66, paragraph 8, of the Code.

The Protocol to the European Code of Social Security

The Protocol increases the minimum amount of benefits by creating a new schedule:

Contingency	Standard beneficiary	Minimum %
Sickness	Man with wife and two children	50
Unemployment	Man with wife and two children	50
Old age	Man with a wife of pensionable age	45
Employment injury:		
Temporary incapacity	Man with wife and two children	50
Permanent total incapacity		
a. General	Man with wife and two children	50
b. In need of permanent care	Man with wife and two children	66.66
Survivors'	Widow with two children	45
Maternity	Woman	50
Invalidity	Man with wife and two children	50
Survivors'	Widow with two children	45

Interpretation

Both the Code and the Protocol oblige the contracting parties to review the level of benefits with respect to “substantial changes in the cost of living”.¹⁵¹ Neither the Code nor the Protocol define what is meant by the cost of living. However, it is clear from the 2001 Report of the Committee of Experts on Standard-Setting Instruments (CS-CO) on Turkey that developments in the consumer prices are not the same as developments in the cost of living. The cost of living is also reflected by other data such as developments in the level of earnings. The committee of experts therefore confirmed that it was going to take a broad view of the concept of the cost of living and references to the consumer price index alone are not enough.

The European Code of Social Security (Revised)

The Revised Code makes some substantial changes to the definition of the standard beneficiary, this was done in order to improve gender equality and to better reflect the changing structure of the family. Firstly, the concept of the male recipient with a wife and two children has been replaced by a person with a spouse and two children. This gender-neutral definition means that either the husband or the wife may act as the breadwinner. Secondly, the Revised Code provides an extra option: that of a beneficiary considered alone. This reflects the growing tendencies for people to live alone. The contracting party is free to choose which bench mark should be used in assessing the level of its benefits. The minimum percentages of benefit provided for single persons are lower than those provided for a family; this allows effective comparison between one contracting party that decides to assess its benefits according to a single person and another contracting party that opts for the family unit for this assessment.

Although the Revised Code has enhanced gender equality and provided a fairer picture of modern households, it still falls short of reflecting some of the developments taking place within Europe. Of course, the Council of Europe opted for a slightly more conservative approach, given that the degree of “social progress” is greater in some states than in others. For example, no recognition has been given to unmarried couples who live together as man and wife, sharing life expenses in the same way as spouses. Neither has any account been given of the fact that more and more families have two earners, the husband and the wife both bringing in an income.

¹⁵¹ Articles 65, paragraph 10, and 66, paragraph 8, of the Code, as also amended by the Protocol.

As well as updating the concept of the standard beneficiary, the Revised Code also increased the minimum percentages applied to benefit amounts. The definitions of a standard beneficiary and the minimum levels of benefit advanced by the Revised Code are illustrated in the table below.¹⁵²

Contingency	Beneficiary considered alone (%)	Beneficiary with dependants	
		Definition	%
Sickness	50	Person with spouse and two children	65
Unemployment	50	Person with spouse and two children	65
Old age	50	Person with spouse of prescribed age	65
Employment injuries and occupational diseases:			
a. Temporary incapacity	50	Person with spouse and two children	65
b. Permanent incapacity no need of constant attendance	50	Person with spouse and two children	65
c. Permanent incapacity and need of constant attendance	70	Person with spouse and two children	80
d. Death of breadwinner: surviving spouse	50	Surviving spouse with two children	65
e. Death of breadwinner: child	20		
Maternity	50	Woman with spouse and two children	65
Invalidity	50	Person with spouse and two children	65
Death of breadwinner: surviving spouse	50	Surviving spouse with two children	65
Death of breadwinner: child	20		

¹⁵² Schedule to Part XI of the Revised Code.

Chapter D11

Suspension of benefits and appeals

The European Code of Social Security

Social security benefits are intended to protect people from social risks or contingencies. When these risks occur people depend upon benefits to ensure a decent standard of living. If those benefits are taken away then the recipient is in real danger of losing that decent standard of living. For this reason, benefits should only be withdrawn from a recipient under carefully prescribed conditions. The Code lists the only permissible situations in which benefits may be suspended¹⁵³ and these are when:

- The recipient is maintained at the public expense or by a social security institution, for example in a rehabilitation centre for incapacitated employees or in prison. However, a portion of the benefit to which they were entitled should be given to their dependants;
- The recipient is absent from the territory of the contracting party. However, the Code must be considered in the context of the other international treaties of the Council of Europe, including the instruments on co-ordination. The co-ordination mechanism established by the Council of Europe demands that certain long-term benefits, such as old age or invalidity pensions can be exported to other states. This means that a person who has earned and is receiving an old age pension in State A is entitled to move to State B and still receive the pension paid by State A;
- The recipient is in receipt of another benefit, other than family benefits, or is paid in respect of the contingency by a third party other than the social security system, such as a private insurer. The benefit may be reduced only by the amount that the recipient is receiving from another source;
- The recipient has made a fraudulent claim;
- The contingency has been caused whilst the recipient was committing a criminal offence;
- The contingency was caused by a wilful act of the recipient, for example when it was deliberately inflicted in order to obtain a benefit, such as self-mutilation;
- Where appropriate, the recipient refuses to undergo medical treatment or rehabilitation that would reduce or even dispel the contingency;
- As regards unemployment benefit, the recipient does not make use of the employment services placed at their disposal;
- As regards unemployment benefit, the recipient lost their job due to a stoppage of work during an industrial dispute or as a result of voluntary unemployment;
- As regards survivors' benefit, the widow lives with another man as his wife.

The Code also makes provision for appealing against the refusal of a benefit or the quantity or quality (as regards benefits in-kind) of a benefit that has been allocated.¹⁵⁴ If this appeal process is dealt with by an independent tribunal specially established to deal with social security issues no right of appeal need exist from this tribunal provided that representatives of the insured persons sit upon it.

The Code provides clear and precise statements of when benefits can and cannot be suspended. It effectively leaves little or no discretion to the contracting parties as to how these rules should be implemented. In this case, there are strong arguments to indicate that these provisions are self-executing and could be relied upon directly before the national courts.

The Protocol to the European Code of Social Security

The Protocol imposed no changes on this part of the Code.

Interpretation

A common problem in the area of suspension of benefits is the distinction between wilful misconduct and negligent conduct. Wilful misconduct includes a mental element of intention, it is a deliberate act and, according to the Code, is a sufficient reason to suspend entitlement to benefit. Negligent conduct is that with a mental element that falls short of intention, a person does something that a reasonable man would not have done thereby causing damage. The Code does not allow suspension in cases of negligence.

¹⁵³ Article 68 of the Code.

¹⁵⁴ Article 69 of the Code.

For example, in Switzerland benefits for invalidity could be reduced, suspended or terminated if the state of invalidity was caused or aggravated by wilful misconduct, by gross negligence or in the course of committing a crime. The Committee of Ministers suggested that the reference to gross negligence be removed.¹⁵⁵ The Swiss Government tried to defend its position by submitting that the interpretation of the national rules by the national courts only allowed suspension in the case of wilful misconduct. The Committee of Ministers was prepared to accept this but on closer inspection of the national jurisprudence it found that the interpretation advanced by the Swiss Government was in fact not taken by the national courts. The situation was not resolved until 25 August 1993 when the Swiss Federal Insurance Tribunal declared that the provisions of the Code on the suspension of benefits were clear, precise, unconditional and therefore capable of direct application by the national courts. This meant that the Code provisions on the suspension of benefits could be relied upon in national courts in Switzerland and that these provisions were in fact superior to the national rules. The Swiss courts were free to do this under Swiss law and were not forced to take this approach by the Council of Europe.

The European Code of Social Security (Revised)

The Revised Code makes very few amendments to the Code and Protocol in this respect. It repeats the circumstances laid down in the Code during which it is permissible to suspend a benefit and it adds two more:

- In the case of invalidity, old age or survivors' pensions, for as long as the person is engaged in economic activity: the level of economic activity needed before the benefit is suspended is left to the discretion of the contracting party; and
- In the case of benefits that are granted without any specified qualifying period suspension may take place to prevent abuse: of course, it would be up to the social security authority to prove that a given individual beneficiary was abusing the system before that person's benefit could be suspended.

The Revised Code expressly states that appeals concerning entitlement to or the quantity/quality of benefits shall not be subject to any financial charge to the complainant.

¹⁵⁵ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Switzerland, 1987.

Chapter D 12

Financing

The European Code of Social Security

The Code stresses that social security benefits and the costs of administering the social security system must be funded by collective financing.¹⁵⁶ Collective financing involves individuals pooling their resources for the greater good. It is closely connected with the principle of solidarity and generally means that contributors do not always receive the same amount of money in benefits that they deposited in contributions. The effect is usually a redistribution of income from the more affluent members of society to those who earn or have earned less. The Code confirms that social security may be financed by social security contributions paid by employees and/or employers, by general taxation or through a combination of these.

The Code also sets some limits on the amount of contribution or taxation that may be imposed upon the people. The contracting party must ensure that the contributions or taxation is at such a level as to “avoid hardship to persons of small means”, this stresses the solidarity element of the collective financing ideal. Contributions and taxes should also be established in view of the economic situation of the country and the classes of person protected; this relates to the concept of sustainability. The goal as far as social security is concerned is to maintain a system that operates effectively in the long term; failure to take into consideration the economic situation of the nation or those who are being protected could jeopardise the smooth running of social security schemes in the future.

Minimum standards are also established concerning the distribution of financing responsibility between employers and employees. As the world moves towards greater globalisation, the competition between states for foreign investment intensifies. One means by which to secure more international financing is to keep labour costs as low as possible. Low labour costs will also benefit domestic firms which export products to states with higher labour costs. Employers’ social security contributions are often viewed as hidden labour costs and there is a fear that states will reduce employers’ contributions and raise employees’ contributions in order to better compete on the international market. For this reason, the Code states that employees should never have to pay more than 50% of the total financing resources required in each or all of the contingencies except family benefits and employment injury benefits.

The Code places an obligation on the contracting party to accept general responsibility for the payment of benefits and maintaining the financial balance of their social security systems. This means that the state must guarantee the benefits prescribed by the Code. So, even if the state has entrusted the organisation of a social security scheme to a private or semi-private body, it still bears the ultimate financial responsibility for the payment of benefits. Maintaining the financial balance of the system will require careful planning and regular actuarial assessments. This is another example of the Code stressing the importance of sustainability.

The Code further provides that if the day-to-day administration of the social security scheme is not organised by a politically accountable government body, then representatives of the persons covered by the scheme must be involved in the management of that scheme. The range of representatives, their number and their precise role in the decision-making process are all left to the discretion of the contracting party. Their involvement may vary from voting on all decisions to simply being consulted regarding important issues. In any event, some involvement must be guaranteed. This may cause problems for states that have contracted out the day-to-day administration of social security schemes to independent bodies. According to the Code, representatives of insured persons must be accorded some formal role within these bodies.

The Protocol to the European Code of Social Security

The Protocol imposed no changes on this part of the Code.

Interpretation

Problems may arise with the so-called “privatisation” of social security whereby the state sheds some of its responsibility for social security onto other, sometimes private, bodies. For example in 1996, the Netherlands reformed its system of sickness benefits by transferring most of the responsibility for funding and paying benefit to the employers. Under the new system, employers are obliged to pay sickness benefit to their employees throughout the contingency and up to a maximum duration of fifty-two weeks. The old system of sickness benefit, financed by the state through contributions, remains in place only as a safety net for those workers who are unable to receive payments from an employer, for example because the employer is insolvent or the worker was only temporary and their contract has expired. The conditions for

¹⁵⁶ Article 70 of the Code.

entitlement and the amounts of benefit do not change under the new system only the source of financing.

The Committee of Ministers expressed its concern that the new system may violate the parts of the Code concerned with sickness benefit and the financing of social security.¹⁵⁷ The Dutch Government indicated that the Part of the Code on Sickness only applies when there has been a suspension of earnings and if the employer continues to pay wages then there is no suspension of earnings. The earnings are only suspended in those situations where the employer is unable to pay or not legally obliged to pay, at which point the safety net benefits kick in and the employee still receives protection.

The committee of experts focused on the philosophy behind collective financing, that of solidarity. The principle of solidarity does not just cover workers but employers as well. If employers are made responsible for the long-term financing of sickness benefit they will not benefit from the risk sharing that takes place under a collective financing system. The burden would be particularly high on small firms that only employ a small number of staff. As employers take on the risk individually they are going to be more reluctant to employ persons with a poor health record and especially those with disabilities that may require prolonged periods of (justified) absence. The Netherlands attempted to reduce the possibility of discrimination of this kind by introducing a number of measures such as the abolition of pre-employment medical examinations. However, the Committee of Ministers decided that these measures were not sufficient to guarantee equal treatment and overcome the problem of risk-selective employers.¹⁵⁸

The Committee of Ministers decided that the effect of the reforms was to considerably reduce the coverage of the risk of sickness and to place upon the employers the very burdens that collective financing seeks to avoid.

This decision acts as a reference for those states intending to pursue greater “privatisation”. As the costs of social security increase, states are trying to find ways in which to share the responsibility with other actors. The concept of obliging employers to pay for the initial period of sickness benefit has been adopted in a number of states, but no state has extended this obligation to the extent that has been seen in the Netherlands. One of the philosophies behind the increased responsibility of employers during early days of sickness is that employers are going to pay more attention to checking up on abusive absenteeism. However, it is now clear that the Code will not tolerate long periods of enhanced employer responsibility and contracting parties will have to wait for further decisions of the Committee of Ministers before they can establish what is an acceptable period of continued payment of wages during sickness.

The Code does not give any concrete answer regarding new initiatives to develop funded pension systems in order to replace the conventional pay-as-you-go systems. The pay-as-you-go system works on the basis that the active population of today pays for the social security benefits of today’s inactive population. So, old age pensions for existing pensions are financed directly from the contributions of workers. The problem with the pay-as-you-go system is that as life expectancy increases, due to medical developments and a better standard of living, the elderly population also increases. As the relative number of pensioners grows compared to workers, this places increasing pressure on a shrinking active population. Funded systems have been suggested as a means to reduce the financial strain on pay-as-you-go systems. In a funded system, each individual worker saves for their own future. They pay their social security contributions into their own personal “account”. This money is then invested while the worker saves for their future. When the worker retires the money in their personal account (plus any returns on investment) is converted into a periodic benefit. This system is believed to relieve some of the stress of the pay-as-you-go system, increase investment opportunities and instil workers with greater confidence in their future.

Several European countries have already introduced funded elements into their old age pension schemes. In each case the old age pension system has divided into a number of “tiers”. The first tier is typically a basic pension financed according to the pay-as-you-go principle. The second tier is then encompassed by a compulsory funded pension, into which the economically active population is obliged to contribute. Finally, the third tier is composed of voluntary individual pensions purchased on the private market.

So far, the supervisory bodies responsible for the Code and Protocol have not come up with a definitive approach to the treatment of systems based wholly or partially on funded financing mechanisms as opposed to pay-as-you-go ones. As far as voluntary systems are concerned, such as the third tier described in the paragraph above, it appears from Article 6 of the Code that these schemes may be taken into consideration when assessing a contracting party’s obligations.

The European Code of Social Security (Revised)

The Revised Code maintains the same principles of collective responsibility for financing as are advanced in the Code and the Protocol but it does not seek to monitor the distribution of the financing burden between employees and employers.¹⁵⁹

¹⁵⁷ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands, 1998.

¹⁵⁸ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands, 2000.

¹⁵⁹ Article 76 of the Revised Code.

This could conceivably allow states to gradually place a higher and higher financing burden on the workers in order to relieve the costs of labour imposed upon employers.

Appendix

Signatures and ratifications of the European Code of Social Security, the Protocol to the European Code of Social Security and the European Code of Social Security (Revised)

European Code of Social Security (ETS No. 48)

Opening for signature:

Place: Strasbourg
Date: 16 April 1964

Entry into force:

Conditions: three ratifications
Date: 17 March 1968

States	Date of signature	Date of ratification	Date of entry into force	Part II	Part III	Part IV	Part V	Part VI	Part VII	Part VIII	Part IX	Part X
Albania												
Andorra												
Armenia												
Austria	17/02/70											
Azerbaijan												
Belgium	13/05/64	13/08/69	14/08/70	X	X	X	X	X	X	X	X	X
Bulgaria												
Croatia												
Cyprus	15/04/92	15/04/92	16/04/93		X	X	X	X			X	X
Czech Republic	10/02/00	08/09/00	09/09/01	X	X	X	X		X	X	X	X
Denmark	16/04/64	16/02/73	17/02/74	X	X	X	X	X	X	X	X	
Estonia	24/01/00											
Finland												
France	04/10/76	17/02/86	18/02/87	X		X	X	X	X	X	X	
Georgia												
Germany	16/04/64	27/01/71	28/01/72	X	X	X	X	X	X	X	X	X
Greece	21/04/77	09/06/81	10/06/82	X	X		X	X		X	X	X
Hungary												
Iceland												
Ireland	16/02/71	16/02/71	17/02/72		X	X	X		X			X

European Code of Social Security (ETS No. 48) (continued)

Italy	16/04/64	20/01/77	21/01/78				X	X	X	X		
Latvia												
Liechtenstein												
Lithuania												
Luxembourg	16/04/64	03/04/68	04/04/69	X	X	X	X	X	X	X	X	X
Malta												
Moldova												
Netherlands	15/07/64	16/03/67	17/03/68	X	X	X	X	X	X	X	X	X
Norway	16/04/64	25/03/66	17/03/68	X	X	X	X	X			X	X
Poland												
Portugal	19/11/81	15/05/84	16/05/85	X	X	X	X		X	X	X	X
Romania												
Russia												
San Marino												
Slovakia												
Slovenia												
Spain	12/02/93	08/03/94	09/03/95	X	X	X	X	X		X	X	
Sweden	16/04/64	25/09/65	17/03/68	X	X	X	X		X	X	X	X
Switzerland	01/12/76	16/09/77	17/09/78				X	X	X		X	X
"the former Yugoslav Republic of Macedonia"												
Turkey	13/05/64	07/03/80	08/03/81	X	X		X	X		X	X	X
Ukraine												
United Kingdom	14/03/67	12/01/68	13/01/69	X	X	X	X		X			

Protocol to the European Code of Social Security (ETS No. 48 A)

Opening for signature:
Place: Strasbourg
Date: 16 April 1964

Entry into force:
Conditions: three ratifications
Date: 17 March 1968

States	Date of signature	Date of ratification	Date of entry into force	Part II	Part III	Part IV	Part V	Part VI	Part VII	Part VIII	Part IX	Part X
Albania												
Andorra												
Armenia												
Austria												
Azerbaijan												
Belgium	13/05/64	13/08/69	14/08/70	X	X	X	X	X	X	X	X	X
Bulgaria												
Croatia												
Cyprus												
Czech Republic	10/02/00											
Denmark	16/04/64											
Estonia												
Finland												
France	04/10/76											
Georgia												
Germany	16/04/64	27/01/71	28/01/72	X	X	X	X	X	X	X	X	X
Greece	25/05/78											
Hungary												
Iceland												
Ireland												
Italy	16/04/64											
Latvia												
Liechtenstein												
Lithuania												
Luxembourg	16/04/64	03/04/68	04/04/69	X	X	X	X	X	X	X	X	X
Malta												

Protocol to the European Code of Social Security (ETS No. 48 A) (continued)

Moldova												
Netherlands	15/07/64	16/03/67	17/03/68	X	X	X	X	X	X	X	X	X
Norway	16/04/64	25/03/66	17/03/68		X		X	X	X		X	X
Poland												
Portugal	19/11/81	15/05/84	16/05/85		X	X	X		X		X	X
Romania												
Russia												
San Marino												
Slovakia												
Slovenia												
Spain												
Sweden	16/04/64	25/09/65	17/03/68		X	X	X		X		X	X
Switzerland												
"the former Yugoslav Republic of Macedonia"												
Turkey	13/05/64											
Ukraine												
United Kingdom												

European Code of Social Security (Revised) (ETS No. 139)

Opening for signature:

Place: Rome
Date: 6 November 1990

Entry into force:

Conditions: two ratifications
Date:

States	Date of signature	Date of ratification	Date of entry into force
Albania			
Andorra			
Armenia			
Austria	19/02/91		
Azerbaijan			
Belgium	06/11/90		
Bulgaria			
Croatia			
Cyprus	06/11/90		
Czech Republic			
Denmark			
Estonia			
Finland	06/11/90		
France	06/11/90		
Georgia			
Germany	06/11/90		
Greece	06/11/90		
Hungary			
Iceland			
Ireland			
Italy	06/11/90		
Latvia			

European Code of Social Security (Revised) (ETS No. 139)
 (continued)

Liechtenstein			
Lithuania			
Luxembourg	06/11/90		
Malta			
Moldova			
Netherlands	01/06/93		
Norway	06/11/90		
Poland			
Portugal	27/03/91		
Romania			
Russia			
San Marino			
Slovakia			
Slovenia			
Spain			
Sweden	06/11/90		
Switzerland			
"the former Yugoslav Republic of Macedonia"			
Turkey	06/11/90		
Ukraine			
United Kingdom			