

**EXAMINATION OF THE CARDS-SISP COUNTRIES' (Albania,
Bosnia and Herzegovina, Croatia, Kosovo, FYR of Macedonia,
Montenegro, Serbia) SOCIAL SECURITY SYSTEMS**

**On their conformity with the European standards as contained in
the instruments of the Council of Europe and the policy
documents of the European Union**

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INTRODUCTION

This report presents an examination of the CARDS-SISP-countries' social security systems on their conformity with the European standards as contained in the instruments of the Council of Europe and the policy documents of the European Union. The assessed countries are: Albania, Bosnia and Herzegovina, Croatia, Kosovo, FYR of Macedonia, Montenegro and Serbia. The main objective of this task was, to screen the current and planned social security schemes on their conformity with the European standards especially as contained in the instruments of the Council of Europe and the policy documents of the European Union. The report shall indicate the compatibility of the national social security systems with the common European standards in the field of social protection, which are mainly found in the (Revised) European Code of Social Security, the (Revised) European Social Charter and the policy documents of the European Union.

This report is based on the materials which local project experts collected on the basis of a structured format on their national social security systems.

The report is composed of the following parts:

- Part 1 examines the administrative organization of the social security systems.
- Part 2 concerns the personal scope of application in the fields of medical care, sickness benefit, unemployment benefit, old-age benefit, work accident and occupational disease benefit, family benefit, maternity benefit (pregnancy, confinement etc.), maternity benefit (suspension of earnings), invalidity benefit and survivors' benefit.
- Part 3 analyses the risks and benefits in the fields of medical care, sickness benefit, unemployment benefit, old-age benefit, work accident and occupational disease benefit, family benefit, maternity benefit (pregnancy, confinement etc.), maternity benefit (suspension of earnings), invalidity benefit and survivors' benefit.
- Part 4 is related to financing of the social security systems.
- Part 5 contains a conclusion.

Parts 1 – 4 are constructed in the same way: They start with general explanations, which are followed by a concrete assessment of the SISP-countries.

Above all, I have to thank Mr. Alexander Brenneis for his help.

1 Administrative organization

1.1 Participation of protected persons

Article 71 of the Code and Article 77 of the Revised Code govern the participation of protected persons in the management of social security institutions:

Accordingly, national laws may choose between two different schemes for the organization of the social security institutions:

1. Social security is administered by a government department that is responsible to parliament (“legislature”): The consideration of protected persons’ interests is guaranteed by this responsibility to the representative body elected by the people (**political accountability**).
2. Social security is not government-run or the government department is not responsible to parliament: In this case, representatives of the persons protected must be enabled to
 - a. participate in the management (**participation**) or
 - b. be associated with the management in an advisory capacity (**association**).

This does not rule out the possibility to let representatives of employers and public authorities participate in the administration as well.

The participation and association procedures have to be determined by national legislation.

These prerequisites are fulfilled if some involvement of the persons protected is guaranteed. The Code does not prescribe a certain method for the appointment of representatives, their number or their role in the decision-making process. Hence, the range of involvement can vary very much from country to country: Representatives may vote on all decisions or only be consulted on important issues. What is not admissible is to “source out” the social security administration to bodies that are completely independent both from the state administration and the protected persons. A certain (formal) role within these bodies must be guaranteed to the protected persons’ representatives.

1.2 Concrete assessment of the SISP-countries

In **Serbia** and **Montenegro** the administration of social security schemes is entrusted to non-government institutions under public law. These institutions have their own legal personality and are not included in state administration. The governing bodies of these institutions are organized according to the bipartite or tripartite principle (employers, employees, beneficiaries and government representatives). The same applies to **Albania**, **Croatia** and **Kosovo**. Hence follows that the administrative organization of these countries is in compliance with the Code and the Revised Code because some involvement of the persons protected is guaranteed.

Bosnia and Herzegovina chose another administrative organization. Social security administration is mainly the responsibility of the entity governments and within the Federation of Bosnia and Herzegovina is often further decentralised to cantonal level. Moreover there are different health insurance and pensions funds at the entity level and within the Federation of Bosnia and Herzegovina also on the cantonal level. But there is no information on the administration of these funds.

Concerning **Macedonia** it is only reported that the Pension and Disability Insurance Fund, the Employment Agency and the Health Insurance Fund are independent bodies under supervision of the Ministry of Labour and Social Policy respectively the Ministry of Health.

The reference to the independence of these bodies makes clear that social security is not administered by a government department that is responsible to parliament. Therefore it is necessary that representatives of the persons protected are enabled to participate in the management or associated with the management in an advisory capacity. Otherwise the administration organization of the Macedonian social security institutions would not be in compliance with the Code and the Revised Code. Because of a lack of information this assessment is impossible.

2 Personal scope of application

2.1 General introduction

The Code and the Revised Code define the personal scope separately for each of the nine contingencies (social risks) in Parts II to X. The definition of the personal scope typically applied by the (Revised) Code is twofold:

- a. The Code defines **categories** of individuals covered for each contingency.
- b. The Code then prescribes a certain **percentage** of individuals within these categories that have to be protected by the social security scheme.

States have to ensure a sufficient coverage of its population before ratifying a part (contingency) of the Code.

The minimum levels differ from contingency to contingency, but they have been increased in the Revised Code. Article 14 of the Revised Code requires for instance the following coverage for sickness benefit: **all employees**, including apprentices, **or prescribed classes of the economically active population** constituting in all at least 80 % of the total economically active population.

Generally, exclusions of relatively small parts of the population are nonetheless admissible. For instance, Article 14 § 2 of the Revised Code provides that classes of employees constituting no more than 10 % of all employees may be excluded from the personal scope of application (**flexibility clause**).

The following table gives a rough overview of the minimum personal scopes of application set by the Revised Code for each type of benefit. The specified definitions within a benefit apply alternatively, and flexibility clauses are already taken into consideration for the stated quotas.

Type of benefit	Minimum personal scope under the Revised Code
medical care	a. 80 % of employees + children + dependent spouses b. 75 % of economically active persons + children + dependent spouses c. 70 % of residents
sickness benefit	a. 90 % of employees b. 80 % of economically active persons
unemployment benefit	a. 85 % of all employees + three out of eight categories b. 70 % of economically active persons + three out of eight categories
old-age benefit	a. 90 % of employees b. 80 % of economically active persons c. 90 % of residents
employment injury benefit	a. 95 % of employees b. 80 % of economically active persons

Type of benefit	Minimum personal scope under the Revised Code
family benefit	a. children of 95 % of employees + children of persons receiving certain benefits b. children of 90 % of economically active persons + children of persons receiving certain benefits c. children of 100 % of residents d. children of 100 % of residents with low means
maternity benefit (pregnancy, confinement and their consequences)	a. women belonging to 95 % of employees + female children + wives of men belonging to classes of 95 % of employees b. women belonging to 90 % of economically active persons + female children + wives of men belonging to classes of 90 % of economically active persons c. women belonging to 90 % of residents + female children d. 80 % of female employees + medical long-term care for all female residents e. 75 % of economically active women + medical long-term care for all female residents f. 70 % of female residents + medical long-term care for all female residents
maternity benefit (suspension of earnings)	a. women belonging to 90 % of employees b. women belonging to 80 % of economically active persons
invalidity benefit	a. 90 % of employees b. 80 % of economically active persons c. 90 % of residents
survivors' benefit	a. surviving dependants of 90 % of employees b. surviving dependants of 80 % of economically active persons c. 90 % of resident surviving dependants d. surviving dependants of 90 % of residents

2.1.1. Derogations admissible under the Revised Code

The Revised Code (Article 7) allows states to derogate from a number of provisions, some of them concerning the personal scope of application. According to Article 7 § 1, derogations are admissible from the following provisions:

- Article 9 §§ 1, 2 and 3 (medical care);
- Article 17 § 1 (sickness benefit);
- Article 27 § 1 and Article 29 § 2 (old-age benefit);
- Article 52 §§ 1, 2 and 3 (maternity benefit);
- Article 70 (survivors' benefit).

The Revised Code addresses the risk of excessive derogations by states in two ways:

- a. the derogation is carefully **confined** in its scope, e. g. it is only applicable to self-employed persons, or

- b. it sets out a series of **conditions** that ensure that the state continues to provide a high standard of social security.

Furthermore, Article 7 § 3 of the Revised Code allows states to exclude **civil servants** from the personal scope of the Revised Code if two requirements are fulfilled:¹

- a. The excluded civil servants are covered by special schemes that provide protection at least **equivalent** to the minimum standards of the Revised Code.
- b. The declaration must be **made upon ratification** of the Revised Code and deposited with the instrument of ratification.

2.1.2. European Social Charter

According to **Article 12 of the European Social Charter** all workers and their dependants have the right to social security. The Parties of the Charter have to establish or maintain a system of social security (§ 1 of Art. 12). Concerning the personal scope of application this means that the social security system has to cover a significant percentage of the population².

Article 12 § 3 of the Charter requires states to ensure that changes made to the social security system are progressive. This applies to the expansion of schemes, protection against new risks and the increase of benefits over and above increases in the cost of living. Any modifications should not reduce the effective social protection of all members of society against social and economic risks and transform the social security system into a basic social assistance system. This condition on any changes to a social security system means that states must maintain basic, compulsory social security systems which are sufficiently extensive, as this is the only effective guarantee against the differential treatment inherent in optional insurance schemes³.

Moreover, the Parties have to ensure equal treatment with their own nationals of the nationals of other Parties in respect of social security rights (§ 4a of Art. 12). In order to ensure the right to social security of persons moving between States the principle of the right to equal treatment must be guaranteed. States are required to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only, apart from the completion of a period of residence for non-contributory benefits. National legislation may not stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree⁴.

According to **Article 16 of the European Social Charter**, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix, shall be equally treated⁵. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.

¹ See Explanatory Report, §§ 99 et seq.

² Digest of the case law of the ECSR, March 2005, 60.

³ Digest of the case law of the ECSR, March 2005, 62.

⁴ Digest of the case law of the ECSR, March 2005, 63.

⁵ Digest of the case law of the ECSR, March 2005, 73.

2.2 Medical care

Both the original Code and the Revised Code take account of two entirely different concepts of defining the personal scope in the field of medical care (Article 9):

1. The concept of **derived rights** (“**insurance systems**”⁶) is based on the primary (direct) entitlement of
 - a. an employee or
 - b. an economically active person.This entitlement is then extended to his or her family members. Spouses, children etc. derive their entitlement to medical care from the primarily (directly) entitled person.
2. The concept of **individual rights** (“**universal schemes**”) bases entitlement on residence. Every man, woman and child is directly entitled.

2.2.1 Revised European Code of Social Security

In principle, Article 9 of the Revised Code stipulates full coverage:⁷

1. Insurance systems:
 - a. **all employees**, and their children and dependent spouses; or
 - b. **all economically active persons**, and their children and dependent spouses.The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.
The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.
The term “dependent spouse” does not include unmarried partners and economically active wives or husbands.
In insurance systems, the following groups have to be included in the personal scope of application (Article 9 § 3):
 - people **receiving or applying for** one of the following benefits: invalidity, old-age, survivors’ benefit, benefit for personal disablement to a degree determined by national legislation, survivors’ benefit in the case of a work accident or occupational disease; and
 - people **receiving** unemployment benefit.For states with insurance systems, there is no obligation for protection of unemployed people who do not receive any benefit.
2. Universal schemes: **all residents**.

Taking into account the flexibility clause of Article 9 § 2, the actual minimum coverage is lower:

1. Insurance systems:
 - a. **95 % of all employees**, and their children and dependent spouses; or
 - b. **90 % of all economically active persons**, and their children and dependent spouses.
2. Universal schemes: **90 % of all residents**.

Subject to a declaration by the state to the Secretary General of the Council of Europe and certain compensation (replacement procedure), the additional flexibility clause of Article 9 § 4 allows even lower coverage rates:

⁶ The term “insurance system” as it is used throughout this analysis does not necessarily imply an *insurance* in a strictly technical understanding. Correctly speaking, the opposite to a *universal system* should be a *system based on a gainful activity*. As most national social security schemes based on a gainful activity are organized as insurance systems in the narrower sense, the rather blunt (but very common) term “insurance system” still appears to be appropriate.

⁷ See Explanatory Report, §§ 107 et seq.

1. Insurance systems:
 - a. **80 % of all employees**, and their children and dependent spouses; or
 - b. **75 % of all economically active persons**, and their children and dependent spouses.
2. Universal schemes: **70 % of all residents**.

The necessary compensation is that the state grants medical long-term care to **all** residents in the case of illness requiring prolonged treatment.

2.2.2 European Code of Social Security

The minimum standards for the personal scope were less strict under the original Code (Article 9):

1. Insurance systems:
 - a. **50 % of all employees**, and their wives and children (under the Protocol⁸: 80 %);
 - b. **20 % of all residents**, and their wives and children (under the Protocol: 30 %).
2. Universal schemes: **50 % of all residents** (under the Protocol: 65 %).

2.2.3 Concrete assessment of the SISP-countries

a. Albania

All economically active persons are covered by health insurance: employed persons, self-employed in urban and rural areas, unpaid family workers, persons otherwise gainfully active or with regular income from property, as defined by Council of Ministers Decision. Non-economically active persons are covered by the State, which pays contributions into the Health Insurance fund on their behalf. Therefore all residents are entitled to medical care. This system is in compliance with the European Code of Social Security and the Revised Code.

b. Bosnia and Herzegovina

Not only in the Federation of Bosnia and Herzegovina but also in the Republic of Srpska the personal scope of application in the field of medical care seems to be very broad. It covers for example employees, self-employed, farmers, pensioners and beneficiaries of rights to professional rehabilitation and employment, registered unemployed and family members. The eligible dependants are spouses, children, parents, grandchildren, brothers, sisters, grandfather and grandmother if they are incapable to live and work independently and if they do not have means to support themselves and other family members if dependent upon the insured person. However, in “Annex 6 – Statistical data” it is stated that in the Federation of Bosnia and Herzegovina only 85% and in the Republic of Srpska only 64% of persons have (free) access to health care infrastructure. This personal scope of application neither fulfils the prerequisites of the European Code of Social Security and the Protocol nor of the Revised Code.

c. Croatia

In Croatia the personal scope of the basic compulsory insurance in the field of medical care is very broad. It covers employed persons in all sorts of activities, public services and governmental bodies, persons employed abroad by foreign employer if they are not covered under that foreign country’s health insurance scheme, self-employed persons, full-time salaried apprentices including persons working as volunteers, military servicemen, persons

⁸ Protocol to the European Code of Social Security, ETS 48A.

who are sent by their employer to attend vocational training or postgraduate study abroad, farmers, pensioners, persons entitled to occupational rehabilitation, unemployed persons registered with the Croatian Employment Institute, persons up to 18 or as long as they are full-time students, disabled war veterans, dependents of the person insured, disabled persons without resources for subsistence and self-contributors. Entitled dependants of the insured are his spouse or cohabitee, children, dependent parents and disabled grandchildren, brothers, sisters and grandparents if dependent upon the insured person.

In “Annex 6 – Statistical data” the total population legally staying in the country is quoted with 4.888.420 persons and the number of persons having (free) access to the health care infrastructure is 4.303.087. This means that only 88,1% of the population have access to the health care infrastructure. This coverage is in conformity with the European Code of Social Security and the Protocol to this Code but it does not fulfil the requirements of the Revised Code that stipulates full coverage. Taking into account the flexibility clause of Article 9 § 2 of the Revised Code the minimum coverage has to be 95% of all employees, and their children and dependent spouses or 90% of all economically active persons, and their children and dependent spouses.

d. Kosovo

At present, Kosovo does not have a law on Health Care. The Ministry of Health has drafted the Law on Health Care which was approved by the Assembly as Law No. 2004/4. Since it was not ratified by the UN Administrator, it has not come to power. At present, it is being amended because it was thought to be financially unachievable. Until this law is approved, the health system in Kosovo is regulated through the Administrative Directive (Health 05/2003). According to this document, all habitual residents of Kosovo are entitled to medical services by general practitioner, specialist and dentist as well as for basic medicaments.

e. Macedonia

In Macedonia almost the whole of the population is covered by the obligatory health insurance as beneficiaries or as family members of the insured person. The health insurance covers the employed, the self-employed carrying out independent activity, persons carrying out agricultural or similar activities, beneficiaries of pensions and other rights pertaining pension and disability insurance, war veterans, temporary unemployed persons, war and civil disabled persons, beneficiaries of social care rights etc.

In the documents at issue the sentence “almost the whole of the population of the Republic of Macedonia is covered by the obligatory health insurance” is not concretized by percentages. If “almost the whole of the population” means 95% of all employees and their children and dependent spouses or 90% of all economically active persons and their children and dependent spouses, the personal scope of application in the field of medical care is in compliance with the Revised European Code of Social Security. In “Annex 6 – Statistical data” it is stated that the wide network of health care organizations allows for approximately 90% of the population to be able to receive health care services in less than 30 minutes. This indicates that more than 90% of all economically active persons, and their children and dependent spouses are entitled to health care.

f. Serbia and Montenegro

The personal scope of application in the field of medical care is the same in Serbia and in Montenegro. The compulsory health insurance covers all persons economically active (employed, self-employed and farmers), pensioners and persons receiving unemployment cash benefit. Within this scheme family members of the mentioned categories who are not insured on their own right are covered, too. The health protection scheme regulates medical care for persons who are not health insured, refugees, internally displaced persons, veterans, disabled veterans, war-disabled civilians and members of their families.

Hence, the personal scope of application in the field of medical care seems to be very broad in Serbia and in Montenegro but in the admitted documents there are no concrete percentages. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

2.3 Sickness benefit

As in the field of medical care, the Code and the Revised Code take account of the diversity of national systems.

The original Code (Article 15) was based upon two different concepts:

1. The **insurance systems** base entitlement either on
 - a. employment or
 - b. economic activity.
2. Other systems apply a **means test**—benefits are only paid to incapacitated persons with means below a fixed level.

The second model (means test) no longer appears in the Revised Code (Article 14).

2.3.1 Revised European Code of Social Security

In principle, Article 14 of the Revised Code requires coverage as follows:⁹

- a. **all employees** or
- b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

However, in view of the flexibility clause of Article 14 § 2, the actual minimum coverage for systems based on employment is lower:

- a. **90 % of all employees** or
- b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.

2.3.2 European Code of Social Security

Once more, the minimum standards for the personal scope of the original Code (Article 15) were less strict:

⁹ See Explanatory Report, §§ 142 et seq.

1. Insurance systems:
 - a. **50 % of all employees** (under the Protocol: 80 %) or
 - b. economically active persons representing **20 % of all residents** (under the Protocol: 30 %).
2. Means test systems: **all residents** who satisfy the means test (according to the levels set by the Code).

2.3.3 Concrete assessment of the SISP-countries

a. Albania

In Albania the personal scope of application in the field of sickness benefit covers employees and those on whose behalf the state makes contributions (for instance unemployed persons). For self-employed persons a voluntary insurance is available. The Council of Ministers may decide on other area of protection and on exceptions among others for seasonal and temporary workers, apprentices and students during the period of practice; these persons are insured by employers for employment accidents only. This indicates that apprentices, seasonal and temporary workers are not entitled to sickness benefit.

It is not possible to assess if the personal coverage in the field of sickness benefit is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania the number of wage earners is 285.906; according to the Labour State Inspectorate of Albania this number is 402.254. Proceeding on the assumption that 265.396 people are entitled to sickness benefits the percentage of coverage is either 92% or only 66% of all employees. The first percentage complies with the Code, the Protocol and the Revised Code, whereas the second percentage only complies with the Code.

b. Bosnia and Herzegovina

In Bosnia and Herzegovina employees are entitled to claim sickness benefits. The only further information concerning the concrete coverage is not satisfactory. In “Annex 6 – Statistical data” the number of persons being insured against the eventuality of sickness is quoted with 838 and there are 553.003 wage earners. If the figure 838 is correct the personal scope of application in the field of sickness benefits neither fulfils the prerequisites of the European Code of Social Security and the Protocol nor the Revised Code.

c. Croatia

In Croatia the basic compulsory insurance for cash sickness benefits covers employed persons in all sorts of activities, public services and governmental bodies, persons employed abroad by foreign employer if they are not covered under that foreign country’s health insurance scheme, self-employed persons, full-time salaried apprentices including persons working as volunteers, military servicemen, persons who are sent by their employer to attend vocational training or postgraduate study abroad. The Croatia law does not provide exemptions from compulsory insurance but a membership ceiling. Persons earning more than 4.250 HRK per month are not obliged to contribute or partake in the compulsory insurance. In “Annex 6 – Statistical data” the average earnings on the basis of professional activities is quoted with 5.985 HRK monthly. This figure indicates that there are a lot of persons not being obliged to contribute or partake in the compulsory insurance. Therefore it is interesting to look at the concrete percentage of the coverage. According to “Annex 6 – Statistical data” the number of

employed persons is 1.640.132 (1.412.445 wage earners, 97.620 self-employed, 52.735 civil servants and 77.332 farmers). The number of persons being insured against sickness is quoted with 1.489.777. Hence, personal scope of application in the field of sickness benefit is 90,8%. This is more than 80% of the total economically active population. This coverage is in compliance with the European Code of Social Security and the Revised Code.

d. Kosovo

In the submitted documents there is no indication of the existence of sickness benefits.

e. Macedonia

As mentioned above (see chapter 2.2.3.) almost the whole of the population of the Republic of Macedonia is covered by the obligatory health insurance. Salary compensation during temporary disability for work due to sickness or injury (sick leave) can be acquired by all employed persons, in accordance with the legislation related to labour relations, who earn the salary by working and the persons who are self-employed and earn their salary by working and were prevented to work due to sickness or injury. Unless conflicting concrete data this personal scope of application fulfils the requirements of the European Code of Social Security and the Revised Code.

f. Serbia and Montenegro

The health insurance schemes of Serbia and of Montenegro cover the risk of sickness and provide medical care and compensation of wage (earnings) in case of temporary incapacity for work due to sickness. In Serbia the entitlement to sickness benefit covers employed and self-employed persons. Farmers are not entitled to this benefit. In Montenegro employed persons are entitled to cash benefit.

The admitted documents contain no concrete percentage of the personal scope of application in the field of sickness benefit. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

2.4 Unemployment benefit

Similar to sickness benefit, the Code and the Revised Code take account of the diversity of national systems.

The original Code (Article 21) based the personal scope upon two different concepts:

1. The **insurance systems** base entitlement on employment.
2. Other systems apply a **means test**—benefits are only paid to unemployed persons with means below a fixed level.

The second model (means test) no longer appears in the Revised Code (Article 20). In return, the Revised Code allows for insurance systems which base entitlement on economical activity.

2.4.1 Revised European Code of Social Security

In principle, Article 20 of the Revised Code requires coverage as follows:¹⁰

- a. **all employees** or

¹⁰ See Explanatory Report, §§ 174 et seq.

b. prescribed classes of economically active persons constituting in all **70 % of the total economically active population.**

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

But then again, in view of the flexibility clause of Article 20 § 2, the actual minimum coverage for systems based on employment is lower:

a. **85 % of all employees** or

b. prescribed classes of economically active persons constituting in all **70 % of the total economically active population.**

Besides, civil servants enjoying a guarantee of security of employment may be excluded from unemployment benefit (Article 20 § 2 b).

In addition to the mentioned minimum coverage, Article 20 § 3 lists eight categories of persons who should be protected even if they have never been belonged or have ceased to belong to the group of protected persons. At least two of the eight categories have to be covered by states:

a. young persons having completed **vocational training**;

b. young persons having completed their **studies**;

c. young persons discharged from **compulsory military service**;

d. **parents** at the end of a period devoted to bringing up a child after the end of maternity leave;

e. persons whose **spouse** is **deceased**;

f. **divorced** persons;

g. **discharged prisoners**;

h. disabled persons who have completed their **occupational rehabilitation.**

2.4.2 European Code of Social Security

The minimum standards for the personal scope of the original Code (Article 21) were less strict and allowed for a means test system:

1. Insurance systems: **50 % of all employees** (under the Protocol: 55 %). There is no provision relating to the economically active population, as in the 1960's unemployment benefit for self-employed persons was generally not available.

2. Means test systems: **all residents** who satisfy the means test (according to the levels set by the Code).

2.4.3 Concrete assessment of the SISP-countries

Concerning the personal scope of application in the field of unemployment benefit the states have to fulfil two prerequisites: a minimum personal coverage and an obligatory coverage for certain classes of persons that have never been employed or have not been employed for a long time.

For **Kosovo** an assessment is not possible because presently the legislation of Kosovo does not foresee any benefits for the unemployed. The government is now planning to create an employment fund. The scheme is intended to assist in creating new jobs and does not foresee any financial compensation for the unemployed.

a. Minimum personal coverage

In **Croatia, Albania** and **Macedonia** all employees are compulsory insured for the risk of unemployment benefit. According to “Annex 6 – Statistical data” of Croatia 1.412.445 persons are wage earners and 1.489.777 persons are insured against the eventuality of unemployment. It is unclear why the number of insured is higher than the number of wage earners.

For Albania it is not possible to assess if the personal coverage in the field of sickness benefit is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania the number of wage earners is 285.906; according to the Labour State Inspectorate of Albania this number is 402.254. Proceeding on the assumption that 265.396 people are entitled to unemployment benefit the percentage of coverage is either 92% or only 66% of all employees. The first percentage complies with the Code, the Protocol and the Revised Code, whereas the second percentage only complies with the Code.

For Macedonia there is no data concerning the number of persons covered by the insurance. Hence follows that for Croatia, Albania and Macedonia it is not possible to assess if the scope of personal application in the field of unemployment benefit is in compliance with the European Code of Social Security and/or the Revised Code.

In **Serbia** and in **Montenegro** unemployment insurance is compulsory for employees and self-employed. Farmers are not covered by this scheme of insurance and thus not entitled to benefits. Concerning Serbia it is mentioned that farmers, as well as other persons who are not insured for the case of unemployment can enter this insurance on voluntary basis. In Montenegro people employed abroad can insure themselves for the case of unemployment provided that they are not insured for this risk according to the provisions of an international agreement. Concerning the assessment of the concrete percentage of coverage it has to be pointed out that the “Annex 6 – Statistical data” only refers to the Republic of Serbia. According to this figures 1.580.140 persons are wage earners and 1.465.046 of them are insured against the eventuality of unemployment. This means that 92,7% of all employees are covered. Hence follows that in Serbia the personal scope of application in the field of unemployment fulfils the requirements of the Code and the Revised Code. Moreover, the alternative possibility provided in the Revised Code (prescribed classes of economically active persons constituting in all 70 % of the total economically active population) is fulfilled. In “Annex 6 – Statistical data” the total economically active population is quoted with 2.200.094 persons (1.580.140 wage earners, 251.747 self-employed and 368.207 farmers); 1.693.547 persons (1.465.046 employees and 248.878 self-employed) are insured against the eventuality of unemployment. This means that 77% of the total economically active population of Serbia are covered. Hence, both of the options for the assessment of minimum personal coverage provided in the Revised European Code of Social Security are fulfilled.

In the **Federation of Bosnia and Herzegovina** only employees are covered whereas in the **Republic of Srpska** compulsory insured employees and voluntary insured are entitled to unemployment benefit. In “Annex 6 – Statistical data” the number of wage earners in Bosnia and Herzegovina is quoted with 553.003; 442.941 persons are registered with social insurance authorities as being insured against the eventuality of unemployment. This means that only

80,1% of the wage earners are covered. This percentage of the coverage fulfils the requirements of the European Code of Social Security and of the Protocol but it is not in compliance with the Revised Code that requires a minimum personal coverage of 85% of all employees.

b. Obligatory coverage for certain classes of persons that have never been employed or have not been employed for a long time

In **Macedonia** and **Montenegro** the right to unemployment benefit applies to persons who were continuously employed for at least 9 months or discontinuously employed for 12 months during the last 18 months. This may be one reason for the fact that only 44.230 from the total number of 309.286 unemployed persons receive unemployment benefit. Similar regulations exist in **Bosnia and Herzegovina**¹¹ and **Serbia**¹².

In **Albania** unemployment benefit is provided if the insured persons have contributed at least 12 months. Moreover, persons, who are attending training and retraining courses, are entitled to unemployment benefit, if they are not paid for this period. In **Croatia** a previous consecutive employment period of 9 months within the last 24 months is required. Unemployed persons who undergo vocational training programm and who are not eligible for unemployment benefit are entitled to unemployment assistance.

In most of the assessed countries unemployment benefits are only granted to people who have previously worked. Persons who have never been formally employed but wish to enter the labour market for the first time are not covered. They are excluded a priori from unemployment insurance. Whereas the European Code of Social Security allows that the payment of total unemployment benefits can be restricted to people who were employed or economically active in the past, the Revised Code is more strict. The exclusion of the labour markets new entrants is contradictory to Article 20 § 3 of the Revised Code. According this Article special categories of persons, e.g. young persons having completed their studies or vocational training, parents at the end of a period devoted to bringing up a child after the end of maternity leave or disabled persons who have completed their occupational rehabilitation, should be protected even if they never where employed or never were employed for a long time (see chapter 2.4.1.). Although in Albania and Croatia in special cases unemployment benefit (Croatia: unemployment assistance) is granted to persons who have never worked or have not worked lately this regulations are not enough.

c. Other problems

In the **Republic of Macedonia** only workers under employment contract are mandatory insured. Moreover, the possibility to be voluntary insured for the social risk of unemployment exists. However, the scope of the relevant Article is limited to Macedonian citizens and their spouses. *Strban*¹³ refers to the equal treatment of all EU citizens and demands that EU citizens

¹¹ The insured person must have paid contributions for unemployment during a period of minimum 8 months continually in the last 12 months or of minimum 8 months with interruptions in the last 18 months before unemployment.

¹² Entitlement to cash compensation lasts: tree months if person has completed one to five years of insurance; six months for five to 15 years of insurance; nine months for 15 to 20 years of insurance; 12 months for more than 20 years of insurance; 24 months for more than 20 years of insurance and 61 (men) or 56 (women) years of age; 24 months for 38 (men) or 33 (women) years of insurance and 51 years of age.

¹³ Examination of the Macedonian Legislation in the Social Security Field. In comparison with the EC Regulations on Co-ordination of Social Security Schemes, Ljubljana 2006, 13.

should be treated equally as Macedonian citizens. He recommends that Macedonian legislator amends the relevant provisions. “A paragraph might be added, stating that EU citizens are to be treated equally as Macedonian citizens”. If Macedonia wants to be in compliance with the European Social Charter this would not be enough because Article 12 § 4a of the Charter states a right to equal treatment. States are required to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only. Therefore it is better to follow the second proposal made by *Strban* and to consider the term workers instead of the term Macedonian citizens.

2.5 Old-age benefit

Both the original Code (Article 27) and the Revised Code (Article 28) take account of two entirely different concepts of defining the personal scope in the field of old age benefit:

1. **Insurance systems** base entitlement either on
 - a. employment or
 - b. economic activity.
2. **Universal schemes** base entitlement on residence.

2.5.1 Revised European Code of Social Security

Generally, Article 28 of the Revised Code requires coverage as follows:¹⁴

1. Insurance systems:
 - a. **all employees** or
 - b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Universal schemes: **all residents**.

The term “employees” includes apprentices (as defined by national law) under the conditions laid down by national legislation, part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

Bearing in mind the flexibility clause of Article 28 § 2, the actual minimum coverage for systems based on employment is lower:

1. Insurance systems:
 - a. **90 % of all employees** or
 - b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Universal schemes: **90 % of all residents**. A means test as it was permissible under the original Code (and at least partly permissible under the Protocol) is no longer included in the Revised Code.

2.5.2 European Code of Social Security

The original Code (Article 27) allowed lower minimum standards for the personal scope:

¹⁴ See Explanatory Report, §§ 225 et seq.

1. Insurance systems:
 - a. **50 % of all employees** (under the Protocol: 80 %) or
 - b. prescribed classes of economically active persons constituting in all **20 % of the total economically active population** (under the Protocol: 30 %).
2. Universal schemes: **all residents** who satisfy the means test (according to the levels set by the Code).

2.5.3 Concrete assessment of the SISP-countries

a. Albania

In Albania the personal scope of application in the field of old-age covers employees, employers and self-employed persons. It is not possible to assess if the personal coverage in the field of sickness benefit is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania 698.209 people are economically active (285.906 wage earners, 374.632 self-employed, 37.671 in other capacities); according to the Labour State Inspectorate of Albania this number is 1.054.417 (402.254 wage earners, 652.163 self-employed). Proceeding on the assumption that 781.969 people are entitled to old-age pension the first figure seems to be wrong because the number of insured is higher than the number of economically active persons. If the number 1.054.417 is correct the percentage of coverage is 74,2% of all economically active persons. This percentage complies with the Code and the Protocol but not with the Revised Code.

b. Bosnia and Herzegovina

In Bosnia and Herzegovina the compulsory pension and invalidity insurance covers all employees, self-employed, farmers and persons in religious services. There are no exemptions from compulsory social insurance.

It is not possible to assess if the personal coverage in the field of old-age pension is sufficient, because in “Annex 6 – Statistical data” the number of the total economically active population is not clear (“work: 638.000 (999.500)”). The number of people being insured against the eventuality of old-age is 469.206. Dependent on the number of the total economically active persons (638.000 or 999.500), the coverage of old-age insurance is 73,7% or only 46,9% of the total economically active population. In both cases the coverage is not in compliance with the Revised Code, but it fulfils the prerequisites of the Code and the Protocol.

c. Croatia

In Croatia the personal scope of application in the field of pension insurance is very broad. It covers employees, salaried civil servants, full time volunteers and apprentices after schooling (regardless of whether they receive salary), unemployed persons according to employment laws and regulations, top sportsmen, clergy, members of management boards of trading companies and parents until the child attains 1 year. Moreover, self-employed are insured. Self-employed farmers are insured if the agriculture or forestry is their only or main activity. Finally, the pension insurance covers persons who earn occasionally based on temporary service contract, regardless of being employed, unemployed or in receipt of pension. Persons insured under the described first pillar (pay-as-you-go) are additionally compulsory insured in the second pillar (fully funded insurance). These are the newly insured after 2002, or those under age 40 in 2002 who were already insured in the first pillar and persons between ages 40

and 50 in 2002 who opted to be compulsory insured in the second pillar. Persons who were insured in the first pillar and older than 50 in 2002 or between ages 40 and 50 in 2002 who did not choose the second pillar insurance remained subject only to the first pillar insurance.

According to “Annex 6 – Statistical data” 1.640.132 people are economically active and 1.460.105 persons are insured against the eventuality of old age. Hence follows that 89% of the total economically active persons are insured. This scope of application in the field of old age is in compliance with the European Code of Social Security and the Revised Code.

d. Kosovo

In Kosovo a new pension scheme is in force. The compulsory old-age insurance is regulated by the UNMIK Regulation 2001/35. This Regulation has substituted the previous pay-as-you-go scheme with the current three pillar pension scheme. Mandatory pension consists of two forms of pension: basic pension and individual savings pension (first pillar). Employers may also provide supplementary employer pension to their employees (second pillar). Individuals may purchase supplementary individual pension through pension providers (third pillar). The basic pension is paid by the pension administration to all persons habitually residing in Kosovo and who have reached pension age. The individual savings pension is a pension paid by the Kosovo Pension Savings Trust to persons of pension age meeting the statutory requirements with respect to pension contributions. Employers are obliged to make contributions for savings pension for all persons habitually residing in Kosovo who were born in the year 1946 or later. Both employers and employees may choose to make contributions to a savings pension individual account regardless of the birth year of the employee. Employees shall be entitled to a savings pension if either the employer or the employee will make contributions on their behalf.

Because of a lack of statistical data a concrete assessment is not possible.

e. Macedonia

The pension and disability insurance in the Republic of Macedonia is mandatory and it includes all employed persons and persons individually performing economic activities. The people entitled to a pension and invalidity insurance are: employees in public and private sector; persons employed in the Army; persons elected or appointed on a public function; citizens of the Republic of Macedonia that are employed with foreign or international organisations, institutions or representations on the territory of the Republic; citizens of the Republic of Macedonia employed abroad, if they are not insured in the country of employment; citizens of the Republic of Macedonia employed with foreign employer in a state in which they are obligatory insured, but the rights from pension and invalidity insurance can not be realised or be used outside this state; physical persons conducting activity; disabled persons due to labour accidents or professional diseases for the period of their prequalification or until they are waiting for their reallocation at another working place; farmers; non-employed persons that are receiving unemployment benefit; independent artists if they have received this kind of status in accordance with the criteria determined by the Ministry of culture; sportists who have the status of a top sportists amateurs, if they are not insured under any other condition.

Although the scope of application in the field of pension and disability insurance seems to be very broad, the economically active population is 832.281 whereas the total number of

pension and disability insured only is 424.563 (“Annex 6 – Statistical data”). Hence follows that the coverage only is 51%. This coverage fulfils the requirements of the European Code of Social Security but it is not in compliance with the Revised Code.

f. Serbia and Montenegro

In Serbia and in Montenegro all professionally active persons (employed, self-employed and farmers) are compulsory insured within the systems of social pension and invalidity insurance. For Serbia it is mentioned that persons who are not economically active and thus uninsured can, within Republican Fund for Pension and Invalidity Insurance of Employed, join into compulsory insurance scheme on voluntary basis.

Concerning the assessment of the concrete percentage of coverage it has to be pointed out that the “Annex 6 – Statistical data” only refers to the Republic of Serbia. According to this figures 1.580.140 persons are wage earners and 1.465.046 of them are insured against the eventuality of old age. This means that 92,7% of all employees are covered. Hence follows that in Serbia the personal scope of application in the field of old age fulfils the requirements of the Code and the Revised Code. Moreover, the alternative possibility provided in the Revised Code (prescribed classes of economically active persons constituting in all 80% of the total economically active population) is fulfilled. In “Annex 6 – Statistical data” the total economically active population is quoted with 2.200.094 persons (1.580.140 wage earners, 251.747 self-employed and 368.207 farmers); 1.984.500 persons (1.465.046 employees, 248.878 self-employed and 368.207 farmers) are insured against the eventuality of old age. This means that 90,2% of the total economically active population of Serbia are covered. Hence, both of the options for the assessment of minimum personal coverage provided in the Revised European Code of Social Security are fulfilled.

2.6 Work accident and occupational disease benefit

Work accident and occupation disease benefit is the Revised Code’s equivalent to the concept of “employment injury benefit” in the original Code.

2.6.1 Revised European Code of Social Security

Generally, Article 35 of the Revised Code requires coverage as follows:¹⁵

- a. **all employees** and, in the case of the death of the victim, the surviving spouse and children; or
- b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population** and, in the case of the death of the victim, the surviving spouse and children.

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

The term “surviving spouse” implies that the spouse was dependent on the victim when the contingency arose. National legislation may define when surviving spouses are to be regarded as incapable of meeting their own needs (e. g. because of age, invalidity, dependent children).

¹⁵ See Explanatory Report, §§ 262 et seq.

The term “child” is defined in Article 1: “a child not having reached school-leaving age, or under 16 years of age” and “under prescribed conditions, a child over the age specified [...] who is an apprentice or a student or suffers from chronic illness or infirmity making him unfit to engage in any occupational activity”.

There is no obligation for protection of unemployed people.

Bearing in mind the flexibility clause of Article 35 § 2, the actual minimum coverage for systems based on employment is once more lower for systems based on employment, leading in fact to the following minima:

- a. **95 % of all employees** or
- b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.

2.6.2 European Code of Social Security

According to the original Code (Article 33), employment injury benefit only applied to employees and not to other economically active persons. As regards the benefits for survivorship, children (under school-leaving age or under 15 years, by choice of the contracting state; partly extended by the Protocol) and wives were covered as well. The minimum coverage was 50 % of all employees (80 % under the Protocol).

2.6.3 Concrete assessment of the SISP-countries

a. Albania

In Albania the personal scope of application in the field of employment injuries and occupational diseases covers employees, employers and self-employed. In the case of the death of the victim the surviving spouse and orphans are covered, too. Moreover, parents, grandparents and grandchildren are entitled to a pension if they were economically dependent upon the victim at the time of his/her death.

It is not possible to assess if the personal coverage in the field of employment injuries and occupational diseases is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania the number of wage earners is 285.906; according to the Labour State Inspectorate of Albania this number is 402.254. Proceeding on the assumption that 265.396 people are entitled to employment injury benefit the percentage of coverage is either 92% or only 66% of all employees. The first percentage complies with the Code, the Protocol and the Revised Code, whereas the second percentage only complies with the Code.

b. Bosnia and Herzegovina

In Bosnia and Herzegovina the scheme for employment injuries and occupational diseases is based on compulsory pension and invalidity insurance and voluntary insurance. All economically active persons are entitled to claim benefits. Proceeding from this it is not clear why the number of people being insured against the eventuality of old age is 469.206 whereas the number of people entitled to work accident and occupational disease benefit is 621.820 (see “Annex 6 – Statistical data”). Moreover, the number of the economically active population is not clear; it is either 638.000 or 999.500 (see chapter 2.5.3). Therefore it is not possible to assess if the scope of personal application in the field of work accident and occupational disease benefit is in compliance with the European Code of Social Security and/or the Revised Code.

c. Croatia

In Croatia there is no special scheme for employment injuries and occupational diseases. The pension insurance covers long-term benefits. The benefits based upon the work injury or occupational disease is granted from the first pillar general pension scheme under more favourable conditions. The health insurance covers short-term benefits and health care. Therefore it can be referred to the chapters 2.5.3 (old-age), 2.3.3 (sickness benefit), 2.11.3 (survivors' benefit) and 2.2.3 (medical care).

d. Kosovo

Concerning work-related injuries and occupational diseases the documents at issue refer to UNMIK Regulation 2003/19 on Occupational Safety, Health and the Working Environment. This document relates a right based approach whereby the employee has the right to safe environment to work. According to the same legislation, the employer is obliged to provide a safe and healthy environment for work. Furthermore, the employer is liable for paying all the expenses related to the treatment all damage caused to the employee in the workplace. However, this regulation does not provide a work accident and occupation disease benefit scheme.

e. Macedonia

The pension and disability insurance in the Republic of Macedonia is mandatory and applies to all employed persons and persons individually performing economic activities (see chapter 2.5.3). The insurance covers the following contingencies: old-age, survivorship, invalidity and employment injury (labour accident and professional diseases). The same benefits are paid for work and non-work related incapacity. However, those suffering from employment injuries or occupational diseases do not have to satisfy any of the qualifying periods. In the case of the death of the victim the surviving spouse and children are entitled to a "Family Pension". Moreover, this applies to parents of the deceased, if they were supported by the deceased and to divorced spouses if she or he was granted maintenance by a court (see chapter 2.11.3).

Although the scope of application in the field of pension and disability insurance seems to be very broad, the economically active population is 832.281 whereas the total number of pension and disability insured only is 424.563 ("Annex 6 – Statistical data"). Hence follows that the coverage only is 51%. This coverage fulfils the requirements of the European Code of Social Security but it is not in compliance with the Revised Code.

f. Serbia and Montenegro

In Serbia employed and self-employed persons are entitled to cash benefit (wage or earning compensation for temporary incapacity for work) if they are temporary incapacitated for work due to work injury or professional disease. Farmers are not entitled to this benefit. In Montenegro employed persons are entitled to cash benefit. In both countries permanent incapacity for work (invalidity) gives entitlement to invalidity pension according to the Law on Pension and Invalidity Insurance. All professionally active persons (employed, self-employed and farmers) are compulsory insured within the system of social pension and invalidity insurance. In Serbia persons who are not economically active and thus uninsured

can, within Republican Fund for Pension and Invalidity Insurance of Employed, join into compulsory insurance scheme on voluntary basis.

In case of the death of the victim his or her family members are entitled to survivors' pension. According to the Law on Pension and Invalidity Insurance the following persons are considered as family members: surviving spouse (widow or widower); children regardless if they are legitimate, illegitimate, adopted or stepchildren if they were maintained by the deceased. In Serbia grandchildren, brothers and sisters and other children without parents or children with one or both parents permanently incapable for work if they were maintained by the deceased; parents (mother, father, step mother/father) if they were maintained by the deceased, are entitled to survivors' pension, too. In both countries the divorced spouse is entitled to survivors' pension if, by court decision, the deceased had obligation to maintain her or him.

Concerning the assessment of the concrete percentage of coverage it has to be pointed out that the "Annex 6 – Statistical data" only refers to the Republic of Serbia. According to this figures 1.580.140 persons are wage earners and 1.465.046 of them are insured against the eventuality of employment injury (work injury and professional diseases). This means that 92,7% of all employees are covered. Hence follows that in Serbia the personal scope of application in the field of employment injury fulfils the requirements of the Code and the Revised Code. Moreover, the alternative possibility provided in the Revised Code (prescribed classes of economically active persons constituting in all 80% of the total economically active population) is fulfilled. In "Annex 6 – Statistical data" the total economically active population is quoted with 2.200.094 persons (1.580.140 wage earners, 251.747 self-employed and 368.207 farmers); 1.984.500 persons (1.465.046 employees, 248.878 self-employed and 368.207 farmers) are insured against the eventuality of employment injury. This means that 90,2% of the total economically active population of Serbia are covered. Hence, both of the options for the assessment of minimum personal coverage provided in the Revised European Code of Social Security are fulfilled.

2.7 Family benefit

The personal scope of family benefit is outlined in a fundamentally different way in the original Code and the Revised Code, respectively. Under the original Code, children only enjoy a right that is derived from an economically active person. Under the Revised Code, family benefit is granted directly to the children for whom the benefit is earmarked, making it an individual right instead of a derived right. Yet the results in what concerns the personal scope are quite similar and differences are primarily based on the typical extended scope of the Revised Code. Following trends in most European countries, the Revised Code now also recognizes systems based upon residence.

2.7.1 Revised European Code of Social Security

States can choose between a number of schemes; they can establish:¹⁶

1. an **insurance system** based on
 - a. employment or
 - b. economic activity; or
2. a **universal scheme** based on
 - a. residence or
 - b. residence and a means test.

¹⁶ See Explanatory Report, §§ 308 et seq.

Within each model, states are, as a general rule, required to protect the children of all persons in the covered groups:

1. Insurance system:
 - a. the children of **all employees** or
 - b. the children of **all economically active persons**.
2. Universal scheme:
 - a. the children of **all residents** or
 - b. the children of all residents whose means do not exceed prescribed limits (**means test**).

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

The term “child” is defined in Article 1: “a child not having reached school-leaving age, or under 16 years of age” and “under prescribed conditions, a child over the age specified [...] who is an apprentice or a student or suffers from chronic illness or infirmity making him unfit to engage in any occupational activity”.

The flexibility clause of Article 46 § 2 allows actually lower coverage rates for insurance systems:

- a. the children of **95 % of all employees** or
- b. the children of **90 % of all economically active persons**.

This flexibility of schemes which base entitlement on employment or economic activity is counterbalanced by an obligation to include, under conditions laid down by national legislation, the children of three categories of persons receiving certain benefits:

- a. invalidity, old-age or survivors’ benefit;
- b. benefit for permanent disablement to a prescribed degree, or survivors’ benefit in the case of a work accident or occupational disease;
- c. unemployment benefit.

2.7.2 European Code of Social Security

The original Code (Article 41) considered only insurance systems and did not require full coverage. The individual right to family benefit had to be granted to:

- a. **50 % of all employees** (under the Protocol: 80 %) or
- b. prescribed classes of economically active persons constituting in all **20 % of the total economically active population** (under the Protocol: 30 %).

2.7.3 Concrete assessment of the SISP-countries

a. Albania

In Albania there is no specific family benefit system, but based on the philosophy of such a system, different benefits are granted. These are benefits in kind, like health service, dental service and drugs for orphans. A special law provides many rights for orphans including other financial treatments, housing, employment etc. Moreover, a supplement for dependent children is paid to persons who get invalidity pensions, long term benefit because of labour accident/professional diseases or unemployment benefit. It is required that they have dependent children less than 18 years of age, or less than 25 years, if they are studying. In case of a disabled child, the supplement is paid for a longer time. Disability benefit is

provided for handicapped children and family allowances for taking care of handicapped children in need of special care.

These informations are not enough to assess if the personal scope of application is in compliance with the European Code of Social Security and/or the Revised Code.

b. Bosnia and Herzegovina

In the Federation of Bosnia and Herzegovina the basic principles on family benefits are based on a philosophy of social insurance. Economically active persons and their families are entitled to claim if they fulfil the conditions prescribed by law. Beneficiaries are employed parents, children without parents and families with handicapped children. In the Republic of Srpska there is a universal system financed from contributions, donations and funds. In the Brcko District there is a universal system financed by the Budget of Brcko District. It provides a flat rate benefit to all residents whose children reside in Brcko District, if they fulfil the conditions prescribed by law. The beneficiaries in Brcko District and in the Republic of Srpska are the residents, if they fulfil the conditions prescribed by law. In the Federation of Bosnia and Herzegovina the benefits are granted, if the children are under 18 years of age. In the case of a regular full-time study the age limit is 25 years. In the Republic of Srpska the regularly age limit is 15 years; in case of handicapped children and children in foster care it is 19 years. There is no information concerning the entitlement of children that suffer from chronic illness or infirmity making them unfit to engage in any occupational activity in the Federation of Bosnia and Herzegovina, and concerning the entitlement of children who are an apprentice or a student in the Republic of Srpska.

Hence follows that in Bosnia and Herzegovina there is an insurance system (Federation of Bosnia and Herzegovina) and a universal scheme (Republic of Srpska and Brcko District). The figures mentioned in “Annex 6 – Statistical data” speak for a non compliance with the European Code of Social Security and the Revised Code. The total population legally staying in Bosnia and Herzegovina is 4.025.476 and the number of working people is “638.000 (999.500)”. Only 114.166 persons are registered with social insurance authorities as being insured against the eventuality of family (children). The total number of children (persons up to 18 years) is 958.524, but the number of children for whom family benefits are granted only amounts to 40.924.

c. Croatia

In Croatia a children allowance is granted to parents (including foster-parents, tutors, step-parents, grandparents) who are Croatian citizens resident in Croatia. They have to be parents of children whom they effectively support and who live with them in the same household, until the children attain the age of 15. After the age of 15 the children allowance is paid if the child is in regular secondary schooling, or if the child is handicapped. Unless otherwise provided by an international agreement, parents of children being Croatian citizens who reside abroad, or being foreign citizens or stateless persons who reside in Croatia are not entitled to children allowance. Parents being foreign citizens having the permit for permanent settlement in Croatia are eligible. This means, that the children allowance is granted to Croatian citizens residing in Croatia and to foreign citizens permanently settled in Croatia for at least 3 years.

According to Article 16 of the European Social Charter, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix to the European Social Charter (revised), shall be equally treated. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. Hence follows that in Croatia foreigners being nationals of other Parties of the Charter lawfully resident or working regularly within the territory of Croatia have to be equally treated. This requirement is not fulfilled if foreign citizens have to be permanently settled in Croatia for at least 3 years.

d. Kosovo

In Kosovo family benefits are divided into material and non-material. Some of the aspects of this risk are covered by the Law on Social and Family Services. This Law provides direct social care, counseling or – in exceptional circumstances – material assistance for the benefit of people in need. A person in need is any person found on the territory of Kosovo regardless of status or place of origin who is in need of social services. A family in need is one where a parent or parents or other caregiver require help in caring for a child because of their own circumstances or those of the child or in circumstances where there is a child suffering serious harm as a result of the neglect or abuse or their parents' inability to care for them adequately.

The admitted documents contain no concrete percentage of the personal scope of application in the field of sickness benefit. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

e. Macedonia

Parents who are citizens of the Republic of Macedonia with a permanent residence attain the right to a child benefit for a child being a citizen of the Republic of Macedonia and attending full time education in the country. Parents are only entitled if they are: employed; beneficiaries of a pension or of a permanent financial benefit; unemployed and receiving financial compensation; a farmer being tax payer for a revenue from agricultural activity as the only and main occupation; an artisan who is in business of an old craft or a craft in short supply. A foreign citizen with a residence on the territory of the Republic of Macedonia can attain the right to child benefit in accordance with the Law on Child Care.

If there is a differentiation between citizens of the Republic of Macedonia and foreign citizens resident in Macedonia, such a provision contravenes Article 16 of the European Social Charter. According to this Article, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix to the European Social Charter (revised), shall be equally treated. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. Hence follows that in Macedonia foreigners being nationals of other Parties of the Charter lawfully resident or working regularly within the territory of Macedonia have to be equally treated.

Moreover, in the documents at issue there is no data concerning the number of persons entitled to family benefits. Hence follows that it is not possible to assess if the scope of

personal application in the field of family benefit is in compliance with the European Code of Social Security and/or the Revised Code.

f. Montenegro

In Montenegro social and child protection scheme provides benefits to persons incapable for work and with no means for life, children without parental care, handicapped children, abused children, persons with handicap, old persons and persons and families who, due to special circumstance, need social protection. Child allowance is provided for children of beneficiaries of financial protection of the family, which is subject to means and earnings test of all family members, children with difficulties in development and children without parental care. Child allowance is only provided for the first three children.

Hence follows, that the children of all residents whose means do not exceed prescribed limits are covered by the child protection scheme. This would be in compliance with the European Code of Social Security and the Revised Code. Nevertheless, the restriction of the child allowance to the first three children is not justified.

g. Serbia

The parental supplement is an instrument of population policy. It can be obtained by a mother who is citizen of Serbia (with residence in Serbia), health insured in Serbia and caring for the child. For the first four children a child allowance is paid. The following persons are entitled to this benefit: one of the parents, adopter, trustee or sustainer who is citizen of Serbia (with residence in Serbia), health insured in Serbia and caring for the child. Children must be younger than 19 years of age and at school within the system of education in the Republic of Serbia.

If there is a differentiation between citizens of Serbia and foreign citizens resident in Serbia, such a provision contravenes Article 16 of the European Social Charter. According to this Article, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix to the European Social Charter (revised), shall be equally treated. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. Hence follows that in Serbia foreigners being nationals of other Parties of the Charter lawfully resident or working regularly within the territory of Serbia have to be equally treated.

It is not possible to assess if the scope of personal application in the field of family benefit is in compliance with the European Code of Social Security and/or the Revised Code because in the documents at issue there is no data concerning the number of persons entitled to family benefit.

2.8 Maternity benefit (pregnancy, confinement etc.)

Both the original Code (Article 48) and the Revised Code (Article 52) give women individual *and* derived rights for the contingency of pregnancy, confinement and their consequences:

1. **Individual rights** of women are based on their
 - a. employment or
 - b. economic activity or

c. residence.

2. **Derived rights** of dependent women are based on their husband's

- a. employment or
- b. economic activity.

Apart from the distinction between individual and derived rights, the definition of the personal scope in the Revised Code follows the traditional dichotomy of:

- 1. an **insurance system** based on
 - a. employment or
 - b. economic activity; and
- 2. a **universal scheme** based on residence.

The original Code did not recognize residence-based systems.

2.8.1 Revised European Code of Social Security

In principle, Article 52 of the Revised Code requires full coverage in what concerns the contingency of pregnancy, confinement and their consequences:¹⁷

- 1. Insurance systems:
 - a. **all female employees** and their female children, the dependent wives of male employees and their female children; or
 - b. **all economically active women** and their female children, the dependent wives of economically active men and their female children.

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

The term “dependent wife” does not include unmarried partners and economically active wives.

In insurance systems, the following groups have to be included in the personal scope of application (Article 52 § 3):

- women **receiving or applying for** one of the following benefits: invalidity, old-age, survivors' benefit, benefit for personal disablement to a degree determined by national legislation, survivors' benefit in the case of a work accident or occupational disease; and
- women **receiving** unemployment benefit; and
- dependent wives of men **receiving** one of the aforementioned benefits **or claiming** invalidity, old-age or survivors' benefit, and their female children.

For states with insurance systems, there is no obligation for protection of unemployed people who do not receive any benefit.

2. Universal schemes: **all female residents**.

Taking into account the flexibility clause of Article 52 § 2, the actual minimum coverage is lower:

- 1. Insurance systems:
 - a. women belonging to classes constituting **95 % of all employees**, and their female children as well as the wives of men belonging to these classes, and their female children; or
 - b. women belonging to classes constituting **90 % of all economically active persons**, and their female children as well as the wives of men belonging to these classes, and their female children.

¹⁷ See Explanatory Report, §§ 332 et seq.

2. Universal schemes: women belonging to classes constituting **90 % of all residents**, and their female children.

Subject to a declaration by the state to the Secretary General of the Council of Europe and certain compensation (replacement procedure), the additional flexibility clause of Article 52 § 4 allows even lower coverage rates:

1. Insurance systems:
 - a. **80 % of all female employees**; or
 - b. **75 % of all economically active women**.
2. Universal schemes: **70 % of all female residents**.

The necessary compensation is that the state grants medical long-term care to **all** residents in the case of illness resulting from pregnancy and requiring prolonged treatment.

2.8.2 European Code of Social Security

The original Code (Article 48) considered only insurance systems and did not require full coverage:

- a. all women belonging to classes constituting **50 % of all employees** (under the Protocol: 80 %), and the wives of men in these classes;
- b. all women belonging to classes of the economically active population constituting **20 % of all residents** (under the Protocol: 30 %), and the wives of men in these classes.

The Code contains no provisions for coverage based on residence alone. Maternity is therefore purely based upon a woman's status as employee, economically active person or someone who derives her benefit from her husband.

2.8.3 Concrete assessment of the SISP-countries

a. Albania

In Albania all residents are entitled to benefits in kind. All women have a right to periodical medical treatment of pregnancy before, during and after birth of a child. This treatment is offered in public institutions and is free of charge.

Unless conflicting concrete data this personal scope of application fulfils the requirements of the European Code of Social Security and the Revised Code.

b. Bosnia and Herzegovina

Concerning benefits in kind in Bosnia and Herzegovina there is a universal free health's coverage related to pregnancy, child delivery and child nursing. In the admitted documents there are no more informations concerning this scope of application. But it is stated that the applicable statutory basis are the different Laws on Health Insurance of the Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brcko District. According to these Laws the personal scope of the basic compulsory insurance in the field of medical care seems to be very broad. It covers for example employees, self-employed, farmers, pensioners and beneficiaries of rights to professional rehabilitation and employment, registered unemployed and family members. The eligible dependants are spouses, children, parents, grandchildren, brothers, sisters, grandfather and grandmother, if they are incapable to live and work independently and if they do not have means to support themselves, and other family members if dependent upon the insured person. However, in "Annex 6 – Statistical data" it is stated that in the Federation of Bosnia and Herzegovina only 85% and in the Republic of

Srpska only 64% of the population have (free) access to health care infrastructure. This personal scope of application neither fulfils the prerequisites of the European Code of Social Security and of the Protocol nor of the Revised Code. This also applies to the personal scope of application in the field of maternity (pregnancy, confinement etc).

c. Croatia

The applicable statutory basis is the Health Insurance Act of 2001. In Croatia the personal scope of the basic compulsory insurance in the field of medical care is very broad. It covers employed persons in all sorts of activities, public services and governmental bodies, persons employed abroad by foreign employer if they are not covered under that foreign country's health insurance scheme, self-employed persons, full-time salaried apprentices including persons working as volunteers, military servicemen, persons who are sent by their employer to attend vocational training or postgraduate study abroad, farmers, pensioners, persons entitled to occupational rehabilitation, unemployed persons registered with the Croatian Employment Institute, persons up to 18 or as long as they are full-time students, disabled war veterans, dependents of the person insured, disabled persons without resources for subsistence and self-contributors. Entitled dependants of the insured are his spouse or cohabitee, children, dependent parents and disabled grandchildren, brothers, sisters and grandparents if dependent upon the insured person.

In "Annex 6 – Statistical data" the total population legally staying in the country is quoted with 4.888.420 persons and the number of persons having (free) access to the health care infrastructure is 4.303.087. This means that only 88,1% of the population have access to the health care infrastructure. This coverage is in conformity with the European Code of Social Security and the Protocol to this Code but it does not fulfil the requirements of the Revised Code that stipulates full coverage. Taking into account the flexibility clause of Article 9 § 2 of the Revised Code the minimum coverage has to be 95% of all employees, and their children and dependent spouses or 90% of all economically active persons, and their children and dependent spouses. Hence follows that the personal scope of application in the field of maternity benefit (pregnancy, confinement etc) is in compliance with the European Code of Social Security and the Protocol but it is not in conformity with the Revised Code.

d. Kosovo

In Kosovo the existing legislation foresees very few maternity benefits. Medical treatment is guaranteed by the Administrative Directive (Health 05/2003). According to this document, all habitual residents of Kosovo are entitled to medical services by general practitioner, specialist and dentist as well as for basic medicaments. This Directive only is a transitional solution. The Ministry of Health has drafted the Law on Health Care which was approved by the Assembly as Law No. 2004/4. Since it was not ratified by the UN Administrator, it has not come to power. At present, it is being amended because it was thought to be financially unachievable. Until this law is approved, the health system in Kosovo is regulated through the mentioned Administrative Directive.

e. Macedonia

Women during pregnancy, delivery and maternity leave are entitled to medical treatment. This medical treatment is granted as benefit in kind. The applicable statutory basis is the Law on health insurance 2000. In Macedonia almost the whole of the population is covered by the

obligatory health insurance as beneficiaries or as family members of the insured person. The health insurance covers the employed, the self-employed carrying out independent activity, persons carrying out agricultural or similar activities, beneficiaries of pensions and other rights pertaining pension and disability insurance, war veterans, temporary unemployed persons, war and civil disabled persons, beneficiaries of social care rights etc.

In “Annex 6 – Statistical data” it is stated that the wide network of health care organizations allows for approximately 90% of the population to be able to receive health care services in less than 30 minutes. This indicates that more than 90% of all economically active persons, and their children and dependent spouses are entitled to health care. Hence follows that the personal scope of application in the field of maternity benefit (pregnancy, confinement etc) is in compliance with the European Code of Social Security and the Revised Code.

f. Serbia and Montenegro

Women are entitled to benefit in kind, for example health care, hospital treatment or medicine, in reference with pregnancy and giving birth. These benefits are provided to health insured persons (employed, self-employed and farmers, pensioners and persons receiving unemployment cash benefit) and to their family members.

Hence, the personal scope of application in the field of maternity benefit (pregnancy, confinement etc.) seems to be very broad, but in the admitted documents there are no concrete percentages. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

2.9 Maternity benefit (suspension of earnings)

Differently from the contingency of pregnancy, confinement and their consequences (see chapter 2.8, *supra*), the original Code (Article 48) and the Revised Code (Article 52) give women only individual rights for the contingency of suspension of earnings resulting from maternity. Consequently, rights are exclusively based on their own:

- a. employment or
- b. economic activity.

2.9.1 Revised European Code of Social Security

In principle, Article 52 of the Revised Code requires coverage as follows:¹⁸

- a. **all female employees** or
- b. all women belonging to prescribed classes of economically active persons constituting in **all 80 % of the total economically active population.**

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

However, in view of the flexibility clause of Article 52 § 2, the actual minimum coverage for systems based on employment is lower:

- a. women belonging to classes constituting **90 % of all employees** or

¹⁸ See Explanatory Report, §§ 344 et seq.

- b. all women belonging to prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.

2.9.2 European Code of Social Security

Once more, the minimum standards for the personal scope of the original Code (Article 48) were less strict:

- a. all women belonging to classes constituting **50 % of all employees** (under the Protocol: 80 %);
- b. all women belonging to classes of the economically active population constituting **20 % of all residents** (under the Protocol: 30 %).

2.9.3 Concrete assessment of the SISP-countries

a. Albania

In case of maternity the following cash benefits are awarded: maternity benefit, maternity allowance due to employment change and birth grant. The maternity benefit is paid to insured women with regard to pregnancy and childbirth. The maternity allowance is to reimburse loss of wage because of employment change for reasons of pregnancy. Birth grant is a lump-sum given once to mother or father of a new-born child. The mother shall have priority in eligibility, if she is insured. Hence follows that only employees are entitled to cash benefits.

It is not possible to assess if the personal coverage in the field of maternity benefit (suspension of earnings) is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania the number of wage earners is 285.906; according to the Labour State Inspectorate of Albania this number is 402.254. The number of persons registered with social insurance authorities as being insured against the eventuality of maternity is 760.676. This figure cannot be the right one because it is much higher than the number of wage earners. Maternity and sickness cash benefits have the same applicable statutory basis (Law No. 7703, dated 11.5.1993). Proceeding on the assumption that 265.396 people are entitled to maternity and sickness benefits the percentage of coverage is either 92% or only 66% of all employees. The first percentage complies with the Code, the Protocol and the Revised Code, whereas the second percentage only complies with the Code.

b. Bosnia and Herzegovina

Cash benefits are provided to all employed women. Proceeding on the assumption that the provisions concerning sickness benefit apply the only further information is that in Bosnia and Herzegovina employees are entitled to claim sickness benefits. In “Annex 6 – Statistical data” the number of persons being insured against the eventuality of sickness is quoted with 838 and there are 553.003 wage earners. If the figure 838 is correct the personal scope of application in the field of sickness benefits neither fulfils the prerequisites of the European Code of Social Security and of the Protocol nor of the Revised Code.

c. Croatia

In Croatia cash benefit entitlement includes maternity benefit. It is granted to insured persons during the sick or maternity leave. The basic compulsory insurance for cash sickness benefits covers employed persons in all sorts of activities, public services and governmental bodies,

persons employed abroad by foreign employer if they are not covered under that foreign country's health insurance scheme, self-employed persons, full-time salaried apprentices including persons working as volunteers, military servicemen, persons who are sent by their employer to attend vocational training or postgraduate study abroad. The Croatia law does not provide exemptions from compulsory insurance but a membership ceiling. Persons earning more than 4.250 HRK per month are not obliged to contribute or partake in the compulsory insurance. In "Annex 6 – Statistical data" the average earnings on the basis of professional activities are quoted with 5.985 HRK monthly. This figure indicates that there are a lot of persons not being obliged to contribute or partake in the compulsory insurance. Therefore it is interesting to look at the concrete percentage of the coverage. According to "Annex 6 – Statistical data" the number of employed persons is 1.640.132 (1.412.445 wage earners, 97.620 self-employed, 52.735 civil servants and 77.332 farmers). The number of persons being insured against sickness is quoted with 1.489.777. Hence, personal scope of application in the field of sickness benefit is 90,8%. This is more than 80% of the total economically active population. This coverage is in compliance with the European Code of Social Security and the Revised Code.

d. Kosovo

In Kosovo the existing legislation foresees very few maternity benefits. One of this few benefits is a maternity leave for women working in public service jobs. However, there is a document known as the collective contract, which is signed by the government of Kosovo and the Union of Trade Unions that contains several provisions regarding maternity. Up until now, this agreement has not been implemented due to the lack of funds.

e. Macedonia

Salary compensation during absence from work due to pregnancy, child birth and maternity can be acquired by all employed persons, in accordance with the legislation related to labour relations, who earn the salary by working. The same applies to self-employed who earn their salary by working and are prevented to work due to child expecting or newborn child care. Hence, the personal scope of application in the field of maternity benefit (pregnancy, confinement etc.) seems to be very broad, but in the admitted documents there are no concrete percentages. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

f. Serbia and Montenegro

Employed and self-employed persons are entitled to cash benefit (wage or earning compensation for temporary incapacity for work) if they are temporary incapacitated for work due to maintaining pregnancy and maternity leave. Farmers are not entitled to this benefit. In Montenegro registered unemployed and regular students are entitled, too.

The admitted documents contain no concrete percentage of the personal scope of application in the field of maternity benefit. Therefore it is not possible to verify if the prerequisites of the European Code of Social Security and of the Revised Code are fulfilled.

2.10 Invalidity benefit

As in the field of medical care (see chapter 2.2, *supra*) and sickness benefit (see chapter 2.3, *supra*), the Code and the Revised Code take account of the diversity of national systems.

The original Code (Article 55) was based upon two different concepts:

1. The **insurance systems** base entitlement either on
 - a. employment or
 - b. economic activity.
2. Other systems apply a **means test**—benefits are only paid to residents with means below a fixed level.

Under the Revised Code (Article 59), a means test is no longer admissible. However, a universal scheme based on residence is still contained in the Revised Code.

2.10.1 Revised European Code of Social Security

In principle, Article 59 of the Revised Code requires coverage as follows:¹⁹

1. Insurance systems:
 - a. **all employees** or
 - b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Universal schemes: **all residents**.

The term “employees” includes apprentices (as defined by national law), part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

However, in view of the flexibility clause of Article 59 § 2, the actual minimum coverage for systems based on employment or residence is lower:

1. Insurance systems:
 - a. **90 % of all employees** or
 - b. prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Universal schemes: **90 % of all residents**.

An important special feature of invalidity benefit (and of the Revised Code) is the close link between the method for the definition of the personal scope on one side and the definition of the contingency on the other side. Depending on how personal coverage is organized, the **contingency differs**:

1. Insurance systems—contingency as defined in Article 58 a: incapacity to **work or earn**.
2. Universal schemes—contingency as defined in Article 58 a, b and c:
 - a. incapacity to **work or earn**;
 - b. incapacity to **engage in his usual activities**;
 - c. incapacity of a **child** resulting from **congenital disability** or from **invalidity occurring before the school-leaving age**.

2.10.2 European Code of Social Security

Once more, the minimum standards for the personal scope of the original Code (Article 15) were less strict:

¹⁹ See Explanatory Report, §§ 378 et seq.

1. Insurance systems:
 - a. **50 % of all employees** (under the Protocol: 80 %) or
 - b. economically active persons representing **20 % of all residents** (under the Protocol: 30 %).
2. Means test systems: **all residents** who satisfy the means test (according to the levels set by the Code).

2.10.3 Concrete assessment of the SISP-countries

a. Albania

In Albania the personal scope of application in the field of invalidity covers employers, employees and self-employed persons. It is not possible to assess if the personal coverage in the field of invalidity is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania 698.209 people are economically active (285.906 wage earners, 374.632 self-employed, 37.671 in other capacities); according to the Labour State Inspectorate of Albania this number is 1.054.417 (402.254 wage earners, 652.163 self-employed). Proceeding on the assumption that 781.969 people are entitled to old-age pension the first figure seems to be wrong because the number of insured is higher than the number of economically active persons. If the number 1.054.417 is correct the percentage of coverage is 74,2% of all economically active persons. This percentage complies with the Code and the Protocol but not with the Revised Code.

b. Bosnia and Herzegovina

In Bosnia and Herzegovina the compulsory pension and invalidity insurance covers all employees, self-employed, farmers and persons in religious services. There are no exemptions from compulsory social insurance.

It is not possible to assess if the personal coverage in the field of invalidity pension is sufficient, because in “Annex 6 – Statistical data” the number of the total economically active population is not clear (“work: 638.000 (999.500)”). The number of people being insured against the eventuality of invalidity is 469.206. Dependent on the number of the total economically active persons (638.000 or 999.500), the coverage of old-age and invalidity insurance is 73,7% or only 46,9% of the total economically active population. In both cases the coverage is not in compliance with the Revised Code, but it fulfils the prerequisites of the Code and the Protocol.

c. Croatia

In Croatia the personal scope of application in the field of pension insurance is very broad. It covers employees, salaried civil servants, full time volunteers and apprentices after schooling (regardless of whether they receive salary), unemployed persons according to employment laws and regulations, top sportsmen, clergy, members of management boards of trading companies and parents until the child attains 1 year. Moreover, self-employed are insured. Self-employed farmers are insured if the agriculture or forestry is their only or main activity. Finally, the pension insurance covers persons who earn occasionally based on temporary service contract, regardless of being employed, unemployed or in receipt of pension. Members of voluntary fire brigades and apprentices, rescuers during natural disasters are only entitled in the case of invalidity and death. Persons insured under the first pillar (pay-as-you-

go) are additionally compulsory insured in the second pillar (fully funded insurance). These are the newly insured after 2002, or those under the age of 40 years in 2002 who were already insured in the first pillar and persons between the age of 40 and 50 years in 2002 who opted to be compulsory insured in the second pillar. Persons who were insured in the first pillar and older than 50 years in 2002, or between the age of 40 and 50 years in 2002 who did not choose the second pillar insurance remained subject only to the first pillar insurance.

According to “Annex 6 – Statistical data” 1.640.132 people are economically active and 1.460.105 persons are insured against the eventuality of old age and invalidity. Hence follows that 89% of the total economically active persons are insured. This scope of application in the field of invalidity is in compliance with the European Code of Social Security and the Revised Code.

d. Kosovo

Disability to work is regulated with Law No. 2003/23 of the Kosovo Assembly on Disability Pensions in Kosovo. Every person with permanent habitual status in Kosovo between 18 and 65 years of age is entitled to apply for disability pension. Hence follows that in Kosovo the disability pension scheme is a universal scheme. If this scheme covers 90% of all residents it is in compliance with the Revised European Code of Social Security.

e. Macedonia

The pension and disability insurance in the Republic of Macedonia is mandatory and it applies to all employed persons and persons individually performing economic activities (see chapter 2.5.3). The insurance covers the following contingencies: old-age, survivorship, invalidity and employment injury (labour accident and professional diseases).

Although the scope of application in the field of pension and disability insurance seems to be very broad, the economically active population is 832.281 whereas the total number of pension and disability insured only is 424.563 (“Annex 6 – Statistical data”). Hence follows that the coverage only is 51%. This coverage fulfils the requirements of the European Code of Social Security but it is not in compliance with the Revised Code.

f. Serbia and Montenegro

All professionally active persons (employed, self-employed and farmers) are compulsory insured within the system of social pension and invalidity insurance. In Serbia persons who are not economically active and thus uninsured can, within Republican Fund for Pension and Invalidity Insurance of Employed, join into compulsory insurance scheme on voluntary basis.

Concerning the assessment of the concrete percentage of coverage it has to be pointed out that the “Annex 6 – Statistical data” only refers to the Republic of Serbia. According to this figures 1.580.140 persons are wage earners and 1.465.046 of them are insured against the eventuality of invalidity. This means that 92,7% of all employees are covered. Hence follows that in Serbia the personal scope of application in the field of invalidity fulfils the requirements of the Code and the Revised Code. Moreover, the alternative possibility provided in the Revised Code (prescribed classes of economically active persons constituting in all 80% of the total economically active population) is fulfilled. In “Annex 6 – Statistical data” the total economically active population is quoted with 2.200.094 persons (1.580.140

wage earners, 251.747 self-employed and 368.207 farmers); 1.984.500 persons (1.465.046 employees, 248.878 self-employed and 368.207 farmers) are insured against the eventuality of invalidity. This means that 90,2% of the total economically active population of Serbia are covered. Hence, both of the options for the assessment of minimum personal coverage provided in the Revised European Code of Social Security are fulfilled.

2.11 Survivors' benefit

Similar to the fields of medical care (see chapter 2.2, *supra*), sickness benefit (see chapter 2.3, *supra*) and invalidity benefit (see chapter 2.10, *supra*), the Code and the Revised Code take account of the diversity of national systems.

The original Code (Article 61) was based upon two different concepts:

1. **Insurance systems** derive entitlement either from
 - a. employment or
 - b. economic activity
 of the deceased breadwinner.
2. Other systems apply a **means test**—benefits are only paid to surviving residents with means below a fixed level.

Under the Revised Code (Article 65), a means test is no longer admissible. The universal schemes based on residence are on the contrary even extended in the Revised Code.

2.11.1 Revised European Code of Social Security

Generally, Article 65 of the Revised Code requires coverage as follows:²⁰

1. “Insurance systems”²¹:
 - a. the surviving spouses and children of breadwinners who were **employees** or
 - b. the surviving spouses and children of breadwinners who belonged to prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.

The term “employees” includes apprentices (as defined by national law) under the conditions laid down by national legislation, part-time workers, civil servants (subject to an exclusion according to Article 7 § 3) etc., but not unemployed persons.

The term “economically active persons” covers self-employed persons likewise, but again not unemployed persons.

For states with insurance systems, there is no obligation for protection of unemployed people.

2. Universal schemes:
 - a. **all resident surviving spouses and children** or
 - b. all surviving spouses and children who have lost their **breadwinner** who was **resident**.

The first alternative protects all surviving family members residing on the territory of the contracting state, even if the breadwinner did not reside there himself. The second alternative protects all surviving family members residing on our outside the territory of the contracting state, if only the breadwinner resided on the territory of the contracting state.

The term “surviving spouse” implies that the spouse was dependent on the victim when the contingency arose. National legislation may define when surviving spouses are to be regarded as incapable of meeting their own needs (e. g. because of age, invalidity, dependent children).

²⁰ See Explanatory Report, §§ 421 et seq.

²¹ In the sense of “systems based on a gainful activity” (*cf.* footnote no. 6, *supra*).

The term “child” is defined in Article 1: “a child not having reached school-leaving age, or under 16 years of age” and “under prescribed conditions, a child over the age specified [...] who is an apprentice or a student or suffers from chronic illness or infirmity making him unfit to engage in any occupational activity”.

Bearing in mind the flexibility clause of Article 65 § 2, the actual minimum coverage for systems based on employment is once more lower for systems based on employment or residence, leading in fact to the following minima:

1. Insurance systems:
 - a. the surviving spouses and children of breadwinners who belonged to prescribed classes of employees constituting in all **90 % of all employees**;
 - b. the surviving spouses and children of breadwinners who belonged to prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Universal schemes:
 - a. **90 % of all resident surviving spouses and children** or
 - b. surviving spouses and children of a breadwinner who belonged to prescribed classes of residents, which classes constitute in all **90 % of all residents**.

2.11.2 European Code of Social Security

According to the original Code (Article 61), survivors’ benefit only applied to employees and not to other economically active persons. As regards the benefits for survivorship, children (under school-leaving age or under 15 years, by choice of the contracting state; partly extended by the Protocol) and wives were covered as well. The minimum coverage was 50 % of all employees (80 % under the Protocol).

Again, the minimum standards for the personal scope of the original Code (Article 61) were less severe:

1. Insurance systems:
 - a. the surviving spouses and children of breadwinners who belonged to prescribed classes of employees constituting in all **50 % of all employees**; or
 - b. the surviving spouses and children of breadwinners who belonged to prescribed classes of economically active persons constituting in all **80 % of the total economically active population**.
2. Means test systems: **all resident widows and children** who have lost their breadwinner and who satisfy the means test (according to the levels set by the Code).

2.11.3 Concrete assessment of the SISP-countries

a. Albania

Survivors’ pension is a benefit given to those persons who were dependent upon the deceased person. It is required that the deceased person was or would have been entitled to an old-age or disability pension. In Albania employees, employers and self-employed persons are entitled to an old-age or disability pension. As it was mentioned above (see chapters 2.5.3 and 2.10.3) it is not possible to assess if the personal coverage in the field of old-age and disability is sufficient, because in “Annex 6 – Statistical data” two different figures are mentioned. According to the Social Insurance Institute of Albania 698.209 people are economically active (285.906 wage earners, 374.632 self-employed, 37.671 in other capacities); according to the Labour State Inspectorate of Albania this number is 1.054.417 (402.254 wage earners, 652.163 self-employed). Proceeding on the assumption that 781.969 people are entitled to old-age and disability pension the first figure seems to be wrong because the number of

insured is higher than the number of economically active persons. If the number 1.054.417 is correct the percentage of coverage is 74,2% of all economically active persons. This percentage complies with the Code and the Protocol but not with the Revised Code. This also applies to the survivorship scheme.

The surviving spouse is an entitled person if he or she is caring for a dependent child of the deceased person up to 8 years old; or he or she is disabled; or he or she is 50 years old. The widow and the widower lose their right to a survivors' pension on marriage. Orphans are eligible to a survivors' pension if they were dependent upon the deceased and are under 18 years old, or 25 years if they are studying or if they are disabled. Other beneficiaries are parents, grandparent and grandchildren. Parents, grand parents and step parents are entitled persons if they shared the same household with the deceased for at least one year before the death. Moreover, it is required that they have not other persons liable to take care on them and that they have reached the age of 65 or that they are disabled. Grandchildren get a pension if they were dependent upon the deceased and shared the household with him or her. These prerequisites are in compliance with the Code and the Revised Code.

b. Bosnia and Herzegovina

In Bosnia and Herzegovina all insured persons and old-age pensioners are entitled to survivorships' pension. Insured persons are all employees, self-employed, farmers and persons in religious services. The persons entitled to survivors' pension are the surviving spouse, the divorced spouse, if he or she awarded the support right by the Court, children born within or out of the wedlock, adopted children, stepchildren supported by the insured, grandchildren and other children without parents who were supported by the insured until his or her death. In the Republic of Srpska the parents and stepfather and mother adopter of the insured person are also entitled.

It is not possible to assess if the personal coverage in the field of survivorship is sufficient, because in "Annex 6 – Statistical data" the number of the total economically active population is not clear ("work: 638.000 (999.500)"). The number of people being insured against the eventuality of old-age is 469.206. Dependent on the number of the total economically active persons (638.000 or 999.500), the coverage of survivorships' pension is 73,7% or only 46,9% of the total economically active population. In both cases the coverage is not in compliance with the Revised Code, but it fulfils the prerequisites of the Code and the Protocol.

c. Croatia

Survivors' pension is granted to eligible survivors after the death of the insured (employed or self-employed person) or after the death of a pension beneficiary. Eligible survivors are the following family members: spouse aged 50 or caring for children entitled to survivors' pension and disabled spouses. Widow or widower aged at least 45 at the time of contingency acquires the entitlement upon reaching 50 years of age. Divorced spouses are also eligible under the same conditions as spouses, if he or she is entitled to alimony. Children are eligible for survivors' pension until the age of 15 without any further conditions. After that age they have to be unemployed (entitlement until 18) or have to be in regular education (entitlement until 26). Disabled children are entitled while the disability exists, even for lifetime. The following persons are deemed as children: marital, extramarital and adopted children of the deceased person. Stepchildren, grandchildren and other children (brothers and sisters of the deceased) only are entitled if they were supported by the deceased. Parents of the deceased

person are also eligible if they were supported by the deceased. These requirements are in compliance with the European Code of Social Security and the Revised Code.

Moreover, the scope of application in the field of survivorships' pension fulfils the requirements of the Code and the Revised Code. According to "Annex 6 – Statistical data" 1.640.132 people are economically active and 1.460.105 persons are insured against the eventualities of old age and invalidity. Hence follows that 89% of the total economically active persons are insured and their survivors are entitled to survivors' pension.

d. Kosovo

Presently the only scheme that provides for survivors' pension for the family in case of death of the beneficiary/pensioner is the pension saving scheme. Employers are obliged to make contributions for savings pension for all persons habitually residing in Kosovo who were born in the year 1946 or later. Both employer and employees may choose to make contributions to a savings' pension individual account regardless of the birth year of the employee. Employees shall be entitled to a savings pension if either the employer or the employee will make contributions on their behalf. The Basic Pension and Invalidity Pension are not inherited by family members. Instead, they are terminated with the death of the pensioner. Only the families of victims who died or went missing during the war in Kosovo receive funding for funeral expenses and related issues.

e. Macedonia

The pension and disability insurance in the Republic of Macedonia is mandatory and it applies to all employed persons and persons individually performing economic activities (see chapter 2.5.3). The insurance covers the following contingencies: old-age, survivorship, invalidity and employment injury (labour accident and professional diseases). Entitled survivors are the widows and the widower, legitimate, illegitimate and adopted children, step-children and other children supported by the deceased. Moreover, parents of the deceased (including adoptive and step-parents) if they were supported by the deceased, and the divorced spouse if he or she was granted maintenance by a court, are covered.

Although the scope of application in the field of pension and disability insurance seems to be very broad, the economically active population is 832.281 whereas the total number of pension and disability insured only is 424.563 ("Annex 6 – Statistical data"). Hence follows that the coverage only is 51%. This coverage fulfils the requirements of the European Code of Social Security but it is not in compliance with the Revised Code.

f. Serbia and Montenegro

All professionally active persons (employed, self-employed and farmers) are compulsory insured within the system of social pension and invalidity insurance. In Serbia persons who are not economically active and thus uninsured can, within the Republican Fund for Pension and Invalidity Insurance of Employed, join into compulsory insurance scheme on voluntary basis. Family members of a deceased pensioner or an insured person are entitled to survivors' pension. According to the Law on Pension and Invalidity Insurance the following persons are considered as family members: surviving spouse (widow or widower); children regardless if they are legitimate, illegitimate, adopted or stepchildren if they were maintained by the deceased. In Serbia grandchildren, brothers and sisters and other children without parents or

children with one or both parents permanently incapable for work if they were maintained by the deceased; parents (mother, father, step mother/father) if they were maintained by the deceased, are entitled, too. In both countries the divorced spouse is entitled to survivors' pension if, by court decision, the deceased had obligation to maintain her or him.

Concerning the assessment of the concrete percentage of coverage it has to be pointed out that the "Annex 6 – Statistical data" only refers to the Republic of Serbia. According to this figures 1.580.140 persons are wage earners and 1.465.046 of them are insured against the eventuality of survivorship. This means that 92,7% of all employees are covered. Hence follows that in Serbia the personal scope of application in the field of survivorship fulfils the requirements of the Code and the Revised Code. Moreover, the alternative possibility provided in the Revised Code (prescribed classes of economically active persons constituting in all 80% of the total economically active population) is fulfilled. In "Annex 6 – Statistical data" the total economically active population is quoted with 2.200.094 persons (1.580.140 wage earners, 251.747 self-employed and 368.207 farmers); 1.984.500 persons (1.465.046 employees, 248.878 self-employed and 368.207 farmers) are insured against the eventuality of survivorship. This means that 90,2% of the total economically active population of Serbia are covered. Hence, both of the options for the assessment of minimum personal coverage provided in the Revised European Code of Social Security are fulfilled.

3 Risks and benefits

3.1 (Revised) Code of Social Security

Both the original and the Revised Code cover **benefits for nine contingencies**, regulated by Parts II to X:

medical care; sickness cash benefit (sickness benefit); unemployment benefit; old-age benefit; work accident and occupational diseases benefit (employment injury benefit); family benefit; maternity benefit; invalidity benefit; survivors' benefit.

Member states do not have to grant benefits for all nine contingencies. Instead, the nine material parts of the (Revised) Code serve as a “basket” of social risks from which the signatories may choose.

The provision of Article 2 § 1.b of the Code reveals a certain weighting, if not a hierarchy of contingencies:

1. **old-age benefit** counts as benefit for **three** contingencies;
2. **medical care** counts as benefit for **two** contingencies;
3. all other benefits count as benefit for only one contingency.

This instructive weighting no longer appears in the Revised Code.

The **Code** requires compliance with **six** parts (**eight** parts under the Protocol)—however, in states granting old-age benefit and medical care, the minimum compliance extends in fact only to **three** parts (old-age benefit, medical care plus one of the other benefits; **five** parts under the Protocol). However, these relatively severe requirements are softened by a flexibility clause in Article 2 § 2 secured by a strict procedural regime in Article 2 § 3 (request to the Secretary General, two-thirds majority in the Committee, etc.).

Furthermore, Article 2 § 2 (a provision of which no signatory state actually ever availed itself) contains a more explicit “hard core” clause: at least **one** of Parts IV (unemployment benefit), V (old-age benefit), VI (employment injury benefit), IX (invalidity benefit) and X (survivors' benefit) has to be complied with in any case.

The **Revised Code** offers signatories a much higher flexibility than the original Code:

- The Revised Code requires only compliance with **three** of the nine parts, irrespective of their contents—old-age benefit and medical care are not highlighted in any way.
- States bound by Article 12 §§ 1 to 3 of the European Social Charter²² need to comply with just **one** of the nine parts. States bound (in part or in full) by the European Code of Social Security profit by the same facilitation.

²² The relevant provisions read as follows:

“Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of the ILO Convention (No. 102) concerning Minimum Standards of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. [...].”

The following benefits are required by the Revised Code:

Contingencies (social risks)	Benefit (in general)	Benefits (in particular)
need for medical care of a curative nature need for medical care of a preventive nature	medical care	a. care by general practitioners and specialists b. care by members of a profession allied to the medical profession c. necessary pharmaceuticals d. maintenance (“hotel costs”) e. dental care and necessary prosthesis f. medical rehabilitation g. transport of patients
incapacity for work resulting from an illness or accident entailing suspension of earnings	sickness benefit	a. periodical cash benefit b. lump-sum funeral grant
total unemployment non-total unemployment due to certain reasons	unemployment benefit	a. periodical cash benefit b. preventive measures
survival beyond a prescribed age (usually ≤ 65 years)	old-age benefit	periodical cash benefit
need for medical care initial or temporary incapacity for work total loss of earning capacity partial loss of earning capacity loss of support suffered by the surviving dependants in the event of death (each of them when due to a work accident or occupational disease)	medical care employment injury benefit	a. extended medical care (see chapter 3.7) b. periodical cash benefit c. lump-sum benefit d. lump-sum funeral grant
responsibility for the maintenance of children	family benefit	a. periodical cash benefit b. combination of periodical payments, tax relief, benefits in kind or social services

Contingencies (social risks)	Benefit (in general)	Benefits (in particular)
pregnancy, confinement and their consequences	maternity benefit	a. pre-natal, confinement and post-natal care b. maintenance in a hospital c. necessary pharmaceuticals d. dental care and prosthesis e. medical rehabilitation f. transport
suspension of earnings resulting from maternity	maternity benefit	periodical cash benefit
incapacity to work or earn incapacity to engage in usual activities incapacity of a child	invalidity benefit	a. periodical cash benefit b. cash allowance (for education or adaptation) or specific measures (for progress at school/work) c. increased or special benefit if constant attendance needed
loss of support suffered by the surviving dependants due to death of the breadwinner	survivors' benefit	periodical cash benefit

3.2 European Social Charter

According to **Article 12 § 1** of the European Social Charter the Parties of the Charter undertake to establish or maintain a system of social security. A social security system exists within the meaning of Article 12 § 1 when it comprises most of the nine traditional branches of social security. These are medical care, sickness benefit, unemployment benefit, old age benefit, benefit in case of occupational accident or illness, family benefit, maternity benefit, invalidity benefit and survivors' benefit²³. **Article 12 § 2** requires that the Parties undertake 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.

Moreover, concerning social risks and benefits the European Social Charter contains three important principles, that have to be pointed out: The right to equal treatment and to maintenance of acquired rights (Art. 12 § 4a) and the right to retention of accruing rights (Art. 12 § 4b).

The **right to equal treatment** requires that states have to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only, apart from the completion of a period of residence for non-contributory benefits. National legislation may not stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree²⁴.

²³ Digest of the case law of the ECSR, March 2005, 60.

²⁴ Digest of the case law of the ECSR, March 2005, 62 f.

Right to maintenance of acquired rights means that invalidity benefit, old age benefit, survivors' benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained whatever the movements of the beneficiary²⁵.

The **right to retention of accruing rights** guarantees that there is no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary, the aggregation of employment or insurance periods completed abroad and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit²⁶.

The guarantee of equal treatment within the meaning of Article 12 § 4 requires states to remove any form of discrimination from their social security legislation. As regards the other principles of co-ordination, states may choose between the following means: multilateral convention, bilateral agreement or any other means such as unilateral, legislative or administrative measures. If there is little migratory flow between two states, the adoption of unilateral measures in the form of administrative arrangements or solving each existing and future individual case may be considered sufficient. Where a large number of nationals are concerned, the implementation of these principles is mostly done through the ratification of an international multilateral or bilateral instrument which sets down the technical and practical aspects. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights²⁷.

3.3 Medical care

The contingencies of Part II are outlined in quite different ways in the Codes of 1964 and 1990, respectively. In 1964, the concept of “morbid conditions” leads into a logical impasse; the Revised Code establishes “a more functional definition”²⁸ and transfers all maternity-related medical care to Part VIII (maternity benefit).

3.3.1 Revised European Code of Social Security²⁹

a. Contingency

The contingency covered is “the need for medical care of a curative nature and, under prescribed conditions, the need for medical care of a preventive nature” (Article 8 of the Revised Code). The Revised Code makes no difference whether the need for medical care results from an accident or from a disease. Medical care in connection with maternity (pregnancy and/or confinement) is governed by Part VIII and therefore excluded from Part II.

b. Benefits

The Revised Code (like the original Code) does not fix a precise level of benefits, but instead confines itself to indicating the nature of the medical care that must be covered. The Explanatory Report only states that “the level of the benefits should be in accordance with what is generally recognised and accepted as good medical practice”³⁰.

Article 10 of the Revised Code requires contracting states to make available the following types of medical treatments:

²⁵ Digest of the case law of the ECSR, March 2005, 63.

²⁶ Digest of the case law of the ECSR, March 2005, 63.

²⁷ Digest of the case law of the ECSR, March 2005, 63.

²⁸ NICKLESS, European Code of Social Security: Short Guide, PDF version (2002), p. 34.

²⁹ See Explanatory Report, §§ 102 et seq.

³⁰ Explanatory Report, § 124.

- a. **care by general practitioners and specialists** provided inside hospitals, in institutions other than hospitals and at the patient’s home;
- b. **care by “member[s] of a profession legally recognised as allied to the medical profession, under the supervision of a medical or other qualified practitioner”**—this new definition in the Revised Code relies on national legislation on whether specialised nurses, anaesthetists, ward nurses, physiotherapists, speech therapists etc. are covered;
- c. **necessary pharmaceuticals** if prescribed by medical or other practitioners—“necessary” indicates that not all drugs which are legally for sale in the contracting state need to be provided by the social security scheme, and if there is a choice between two drugs with an equivalent pharmaceutical value for a certain treatment, states may provide only the cheaper one;
- d. **maintenance** in a hospital or other medical institution (“hotel costs” of food and board);
- e. **dental care** and all necessary dental prosthesis for all insured persons—the original Code did not mention dental treatment at all and the Protocol provided only for conservative dental care for children;
- f. **medical rehabilitation** including the supply and maintenance of orthopaedic and prosthetic appliances;
- g. **transport of patients** as prescribed by national law—leaves a wide range of freedom to the contracting parties.

c. Co-payments

Article 10 § 2 of the Revised Code allows that national social security systems require the beneficiary or his breadwinner (in systems based on derived rights, see chapter 2.2, *supra*) to share the cost of medical care through **co-payments (“cost-sharing”)**. The Revised Code does not establish a precise ceiling for co-payments, but stipulates that their levels must not “impose hardship” to the persons covered or “render medical and social protection less effective”—allowing the Commission of independent experts to assess the situation on co-payments based on an overall picture and in a less technical manner. For more details on the issue of co-payments see chapter 4.2.2, *infra*.

d. Qualifying period

To avoid abuse, qualifying periods for entitlement to medical care are admissible (Article 11). They can be based on a specified period of employment and/or residence. The Revised Code itself sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods is, *inter alia*, intended to prevent “social tourism”, i. e. migration based purely on the level of medical care, ultimately forcing states into a low-level harmonization of their social security systems.

e. Period of entitlement

Medical treatment must be granted **throughout the contingency**, i. e. until recovery or death of the patient (Article 12).

f. Waiting period

Under the Revised Code, waiting periods are not admissible in the field of medical care.

3.3.2 European Code of Social Security

a. Contingency

The contingency covered is the need for preventive or curative medical services for any morbid condition, “whatever its cause” (Article 8 of the Code). “Morbid condition” is defined by the ILO as any condition that requires medical care. This *circulus vitiosus* leads to a very

wide definition: Part II covers “all [medical services] that are intended to treat an existing ailment or prevent the development of an ailment”.³¹

Accordingly, two main contingencies can be distinguished:

1. **morbid condition**;
2. **pregnancy**, confinement and their medical consequences.

Compared to the Revised Code, the contingency covered by the original Code is wider in two ways:

- Firstly, it also covers pregnancy.
- Secondly, it covers preventive medical services to the same extent as curative services. (Under the Revised Code, preventive medical services are subject to conditions prescribed by national law.)

b. Benefits

Article 10 of the Code requires the following types of medical treatments for each of the two main contingencies:

1. Morbid condition:

- a. **care by general practitioners**, including home visits;
- b. **specialist care in hospitals** on an in-patient or out-patient basis—any specialist care which can be reasonably provided outside hospitals must also be made available;
- c. **essential pharmaceuticals** if prescribed by doctors or specialists (and, under the Protocol: all “necessary” pharmaceuticals even if not prescribed by a doctor)
- d. **treatment and (overnight) care in a hospital** whenever it is needed, including the so-called “hotel costs” of hospital treatment and the costs of food and board;
- e. under the Protocol only: **conservative dental care for children**, i. e. any dental care intended to prolong the good health of teeth and gums.

2. Pregnancy and confinement:

- a. **pre-natal treatment**, delivery care and post-natal treatment **by medical practitioners or qualified midwives**—states relying upon midwives must impose minimum standards of qualification;
- b. **treatment in a hospital**, including bed and board;
- c. under the Protocol only: **pharmaceutical supplies** (even if not prescribed by a doctor).

In addition, the Code requires contracting states to **inform** people on available curative treatment **and** preventive measures provided by the social security system in the field of health care (Article 10 § 4).

c. Co-payments

Article 10 § 2 of the Code allows that national social security systems require the beneficiary or his breadwinner (in systems based on derived rights, see chapter 2.2, *supra*) to share the cost of medical care through **co-payments (“cost-sharing”)**. Co-payment already played an important role in the 1960’s for pharmaceuticals and in states with reimbursement systems, but in recent years, the concept has become more widespread also in countries with benefit-in-kind systems (e. g. “visit fee” for each consultation of a doctor). The Code establishes no precise ceiling for co-payments, but stipulates that their levels must “avoid hardship” to the persons covered, whereas the Protocol imposes a clear upper limit for co-payment: it must not exceed 25 % of the costs except in the case of routine dental care, for which it may be fixed at a maximum of 33 $\frac{1}{3}$ %.³²

³¹ NICKLESS, *op. cit.*, p. 30.

³² See NICKLESS, *op. cit.*, p. 32 et seq., for details on the limits set by the Protocol and their calculation, particularly in states with fixed co-payments for certain treatments or services.

Co-payments are admissible **only for treatment of “morbid conditions”**, i. e. not for treatment in connection with maternity. This requirement of the Code has already raised some difficulties in the past, particularly in the case of the Netherlands. For more details on this case and on the issue of co-payments in general see chapters 3.9 and 4.2.2, *infra*.

d. Qualifying period

To avoid abuse, qualifying periods for entitlement to medical care are admissible (Article 11). They can be based on a specified period of employment and/or residence. The Code itself sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods was also intended to prevent “social tourism”, i. e. migration based purely on the level of medical care, ultimately forcing states into a low-level harmonization of their social security systems.

e. Period of entitlement

In principle, medical treatment must be granted throughout the whole contingency (Article 12). In the case of morbidity (but again not in the case of maternity), the period of entitlement may be limited to a maximum of **26 weeks in each case** (under the Protocol: **52 weeks in each case or 78 weeks** in any consecutive period of three years, by choice of the contracting state).

In any case, the period of entitlement for medical care shall not be shorter than entitlement for sickness benefit. States must also recognize diseases entailing prolonged care by allowing extension of the entitlement period for these categories of diseases prescribed by national law.

f. Waiting period

Under the Code, waiting periods are not admissible in the field of medical care.

3.3.3 Concrete assessment of the SISP-countries

In all of the assessed countries the health care systems afford *care by general practitioners and specialists* provided inside hospitals, in institutions other than hospitals and at the patient’s home. The same applies to the *maintenance in a hospital or other medical institution*. The supply with the *necessary pharmaceuticals* causes only few problems, too. Only for **Macedonia** it has to be assumed that pharmaceuticals are not performed. Moreover, there are only few problems concerning *dental care* and all necessary dental prosthesis. Except Albania in all countries these benefits are provided to all insured persons. In **Albania** health dental service preventive and treatment is full covered by state budget for persons less than 18 years of age and in urgent cases for those who are in public hospitals. Hence, the question arises whether persons older than 18 are entitled to this benefits. Another problem is that in Albania medical rehabilitation, prosthesis, spectacles, hearing aids etc. are not covered by the social health care system. The granting of *medical rehabilitation* including the supply and maintenance of orthopaedic and prosthetic appliances is not only lacking in **Albania** but also in **Bosnia and Herzegovina, Kosovo, Macedonia and Serbia**. Only in the reports of **Croatia** and **Montenegro** medical rehabilitation is mentioned as one of the benefits provided in the health care system. Moreover, *transport of patients* seems to be not covered by the health care system in **Albania, Bosnia and Herzegovina, Kosovo and Macedonia**. *Care by “member[s] of a profession legally recognised as allied to the medical profession, under the supervision of a medical or other qualified practitioner”* is mentioned in none of the country reports.

For most of the assessed countries it is easier to fulfil the *requirements of the original Code* because it requires fewer benefits than the Revised Code (see chapter 3.3.2). The following types of medical treatment are not required by the original Code: care by member[s] of a

profession legally recognised as allied to the medical profession, under the supervision of a medical or other qualified practitioner, medical rehabilitation including the supply and maintenance of orthopaedic and prosthetic appliances, transport of patients and dental care and all necessary dental prosthesis for all insured persons (under the Protocol only: conservative dental care for children).

The fact that under the Code not only morbid condition but also *pregnancy, confinement and their medical consequences* is one of the main contingencies does not cause great problems for the assessed countries. For treatment in connection with maternity co-payments are not admissible. This requirement is fulfilled in **Albania, Croatia, Bosnia and Herzegovina** and **Kosovo**.

In most of the SISP-countries the beneficiary or his breadwinner has to share the cost of medical care through *co-payments*. In **Bosnia and Herzegovina** the co-payment system in the Republic of Srpska and in the Federation of Bosnia and Herzegovina is different. In the Republic of Srpska patient's average participation for all health services, including hospitals is 10%. Exemptions or reductions are provided for children up to 15 years of age, women during pregnancy and up to 1 year after giving a birth, over 65 years old recipients of certain benefits, people suffering from certain illnesses (diabetes, cancer, TBC, HIV, dialysis), blind people and recipients of social benefits. In the Federation of Bosnia and Herzegovina the co-payment to the costs of hospitalisation varies according to canton laws; the average is up to 15%. In the Brcko District the co-payment to the costs of hospitalisation is up to 20%. Concerning dental prosthesis the co-payment is between 10 and 20%. The co-payment to prosthesis, spectacles and hearing aids varies up to 20%. A similar rule applies to **Macedonia**. 10%-20% of the costs of the medical treatment are paid by the patient. No co-payments are required for visiting the personal doctor, from recipients of social assistance, from disabled persons, for health care for children, from people older than 65 years of age and from families with the minimum income. Moreover, 10% of the costs of hospitalisation and 5%-20% of the costs of dental care have to be paid by the insured person. In **Croatia** the health insurance covers a minimum of 85% of the costs of the following benefits: specialist diagnostic services which do not belong to the primary health care level, physiotherapy and rehabilitation performed at the patient's home and treatment abroad. For specialist health care in physiotherapy and rehabilitation the insurance only covers a minimum of 70% of the costs. But there are a lot of exemptions from the duty of the patient to share the costs. A similar rule applies to the costs of hospitalisation, dental care, pharmaceutical products and prosthesis, spectacles and hearing aids. Moreover, in **Kosovo** and in **Serbia** similar co-payment and exception rules exist. Only in **Albania** no co-payments have to be paid. In the report of **Montenegro** there is no information concerning co-payments.

It is common to all this co-payment rules that vulnerable groups are protected, e.g. by reduced co-payments, complete exemption from co-payment or fixed ceilings for co-payment. Hence follows that these co-payments do not cause hardship to patients. Nevertheless the admissibility of the co-payment rules in **Croatia** is questionable. The problem is that the health insurance only covers a minimum of 75% of the accommodation and catering costs of hospital health care for chronic diseases and a minimum of 70% of the accommodation and catering costs of hospital health care services for acute diseases. Moreover, it could be a problem that the insurance only covers a minimum of 70% of the costs for the specialist health care in physiotherapy and rehabilitation.

Another problem arises in **Kosovo**. For all of the health services in public hospitals a co-payment has to be paid. The fees charged for foreigners (as part of co-payment) are 100% higher than those for habitual residents of Kosovo. Article 12 § 4a of the European Social Charter contains the right to equal treatment. This right requires that states have to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only. Hence follows that the discrimination of foreigners in Kosovo is not in compliance with Article 12 of the European Social Charter.

In none of the assessed SISP-countries *qualifying periods* are provided. Moreover, the *duration of benefits* is no problem in the assessed countries, because in none of the countries the duration is limited. Only for **Kosovo** there is a lack of information concerning qualifying periods and the duration of benefits.

Although the granting of medical care benefits seems to be quite satisfactory one aspect has to be pointed out. It can be explained on the example of **Serbia**. One paragraph on page 13 of “Annex 1” runs as follows: “Under the conditions of outdated and ruined equipment and premises of public health institutions, lack of means for purchase of medicines, medical supplies and standard nutritional structure of patients in the institutions that provide in-patient treatment, the health services provided by majority of public health institutions are at rather low level. In some cases these institutions are even not able to provide a certain service to the insured. That is why the patients are frequently made to pay for services in private health sector and that is a considerable burden”.

3.4 Sickness benefit

Part III is quite similar in the Codes of 1964 and 1990, but similar to Part II (medical care), the concept of “morbid conditions” was transformed to a focus on “illness or accident”, without changing the scope of application very much. The Revised Code introduced a funeral grant in case of death of the beneficiary.

3.4.1 Revised European Code of Social Security³³

a. Contingency

The contingency is any incapacity for work entailing suspension of earnings that results from an illness or accident (Article 13).

Work-related illnesses or accidents are covered by Part VI. Incapacity for work relating to **maternity** (i. e. pregnancy and confinement) is covered by Part VIII. These contingencies are therefore **excluded** from sickness benefit under Part III.

b. Benefits

The social security system has to provide a **periodical benefit in cash** (Article 15). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

In the case of death of a beneficiary, a **lump-sum funeral grant** shall be paid to his surviving dependants (Article 18).

³³ See Explanatory Report, §§ 141 et seq.

c. Qualifying period

To avoid abuse, qualifying periods for entitlement to sickness benefit are admissible (Article 16). They can be based on a specified period of employment and/or residence. The Code sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods was also intended to prevent “social tourism”, i. e. migration based purely on the level of sickness benefit.

d. Period of entitlement

In principle, benefits must be granted throughout the whole contingency or until the payment of old-age, invalidity or rehabilitation cash benefit (Article 17 § 3). Nonetheless, the period of entitlement may be limited to a maximum of **52 weeks** in each case **or 78 weeks** in any consecutive period of three years, by choice of the contracting state, so as to underline the “bridging” character of sickness benefit as a merely temporary compensation.

The entitlement period for sickness benefit always sets the minimum length for entitlement to medical care under Part II (see chapter 3.2, *supra*).

e. Waiting period

To discourage absenteeism, the Revised Code allows a waiting period of up to **three days** (Article 17 § 1). For **self-employed** workers, the waiting period may be longer (Article 17 § 2).

3.4.2 European Code of Social Security

a. Contingency

The contingency is any incapacity for work entailing suspension of earnings that results from a morbid condition (Article 14). “Morbid condition” is defined by the ILO as any condition that requires medical care. The morbid in question in this Part is not work-related.

Incapacity for work relating to **maternity** (i. e. pregnancy and confinement) is covered by Part VIII and thus **excluded** from sickness benefit under Part III.

b. Benefits

The social security system has to provide a **periodical benefit in cash** (Article 16). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Qualifying period

To avoid abuse, qualifying periods for entitlement to sickness benefit are admissible (Article 17). They can be based on a specified period of employment and/or residence. The Code sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods was also intended to prevent “social tourism”, i. e. migration based purely on the level of sickness benefit.

d. Period of entitlement

In principle, benefits must be granted throughout the whole contingency (Article 18). Still, the period of entitlement may be limited to a maximum of **26 weeks in each case** (under the Protocol: **52 weeks** in each case **or 78 weeks** in any consecutive period of three years, by choice of the contracting state), so as to underline the “bridging” character of sickness benefit as a merely temporary compensation.

The entitlement period for sickness benefit always sets the minimum length for entitlement to medical care under Part II (see chapter 3.2, *supra*).

The maximum period of entitlement set by the Code caused problems in the case of Cyprus. The Cypriot scheme of sickness benefit was based on a flexible period of entitlement with a

minimum of only 13 weeks, which could be extended depending on the total amount of contributions made. The Cypriot government argued that most beneficiaries would receive extension periods long enough to be covered for at least 26 weeks. Only young workers would probably not be covered for 26 weeks, but they were less likely to fall ill for longer than 13 weeks anyway. The Committee of Ministers rejected these arguments of the government of Cyprus in 1997; following a resolution of the Committee of Ministers, Cyprus brought its legislation in line with the Code already in 1998.³⁴

e. Waiting period

To discourage absenteeism, the Code allows a waiting period of up to **three days** (Article 18).

3.4.3 Concrete assessment of the SISP-countries

Concerning **Kosovo** the submitted documents contain no indication of the existence of sickness benefits.

According to the Code and the Revised Code the social security system has to provide a *periodical benefit in cash*. In **Albania, Serbia, Montenegro, Macedonia, Bosnia and Herzegovina** and **Croatia** the insured persons are entitled to wage compensation if they are temporarily incapacitated for work due to sickness. Moreover, a sickness allowance awarded to compensate job place changing or reduction of working hours is granted in **Albania**.

In the case of death of a beneficiary, a *lump-sum funeral grant* shall be paid to his surviving dependants. Such a grant is not required under the original Code. Apart from Kosovo and Macedonia in all of the assessed countries a funeral grant is provided.

Qualifying periods for entitlement to sickness benefits are not required in **Serbia, Montenegro, Bosnia and Herzegovina, Albania** and **Macedonia**. In **Croatia** a minimum period of insurance is required. It is 6 months of consecutive insurance or 9 months with interruptions during the last two years. If such a condition is not fulfilled the person insured is entitled to the minimum sickness benefit (850 HRK per month). In my opinion the qualifying period in Croatia could be qualified as “not be longer than necessary to avoid abuse”. Under this condition the qualifying period would be in compliance with the Code and the Revised Code.

In all of the assessed countries the responsibility for funding and paying sickness benefit is partly transferred to the employers. In **Serbia** the employer pays compensation for the first 30 days of incapacity and after that, if incapacity for work still exists, compensation is paid by the Republican Institute for Health Insurance. In **Macedonia** payment of the salary compensation for up to 60 days of disability for work shall be made out of the employer's funds, and only in case of a longer absence out of the Health Insurance Fund, except in cases of care for a sick child up to age of three, donation of blood, tissue of an organ and absence from work due to pregnancy, child-birth and maternity being paid from the Fund as of the first day of occurrence. Also in **Montenegro** for the first 60 days of incapacity the employer pays compensation and after that, if incapacity for work still exists, the Republican Fund for Health Insurance has to pay. In **Croatia** the employer bears the cost of the benefit for the first 42 days of the sick-leave; after that the cash benefit is covered by the Croatian Health Insurance Institute maximum to the period prescribed for the respective individual category of

³⁴ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Cyprus (1997).

disease. In **Albania** the benefit period starts on the 15th day of medical certification of such incapacity. For periods up to the first 14 days the employer has to pay. In **Bosnia and Herzegovina** there are different rules: In the Republic of Srpska employers pay benefits up to 120 days, whereas in the Federation of Bosnia and Herzegovina the duration of the payment of the employer is up to 42 days, beyond that the Insurance Funds grant the benefit up to 1 year.

Concerning the sickness benefits scheme in the Netherlands, that required employers to pay sickness benefits for up to 52 weeks, the Committee of Ministers decided that the reforms considerably reduced the coverage of the risk of sickness and placed too much burden on the employers³⁵. Hence follows that sickness benefits may be paid by employers for the initial period, but not to an extent as in the Netherlands (52 weeks). The above described periods for which the employer has to pay are far from the 52 weeks in the case of the Netherlands. Therefore, in my opinion the mentioned rules in the SISP-countries are in compliance with the Code and the Revised Code.

Concerning the *duration of the benefit* there are no limits in **Macedonia**; the benefit is provided for the duration of illness. In **Bosnia and Herzegovina** the duration of benefits is limited with 12 months. If temporary incapacity for work lasts for a longer period, at latest after one year of incapacity, the Republican Institute for Health Insurance in **Serbia** is obligated to direct such a person, with necessary medical documentation, to competent fund for pension and invalidity insurance for a decision on his eventual invalidity (complete loss of work capability) i.e. entitlement to invalidity pension. In **Croatia** the sick-leave lasts until the doctor of primary health care declares a person capable of work, but the period of sick-leave may not exceed the maximum duration determined by the list of diseases and the maximum period of the sick-leave as related to each kind of an injury or disease. It may be prolonged based on the decision of the specially appointed Medical Commission until the person concerned is expected to be cured, but after the maximum of 6 months (plus 2 months necessary for the Croatian Pension Insurance Institute to give the decision on invalidity pension) the designated doctor submits the claim on invalidity pension at the Croatian Pension Insurance Institute. If authorized medical specialists of the Croatian Pension Insurance Institute assess, and based on such an assessment the competent Croatian Pension Insurance Institute gives the decision, that the person concerned needs to be additionally cured, the person's sick-leave may be prolonged for the additional period of 6 months, and the procedure described may be repeated. Once the Croatian Pension Insurance Institute gives the positive decision on the entitlement to invalidity pension, the sick-leave is cancelled and the person becomes the invalidity pension beneficiary. A restriction of the duration of the payment to 6 months also applies in **Albania**. Nevertheless it may be exceptionally prolonged up to another 3 months, provided a Medical Experts Committee certifies that the insured person concerned shall recover in that period and be not eligible to a disability pension. When an insured person is entitled to a partial disability pension, the cash temporary incapacity of work benefit shall be up to 3 months. Moreover, the sickness allowance awarded to compensate job place changing or reduction of working hours can only be granted for 3 months within one year beginning from the date of the disease which changed the employment. The duration of payment of cash sickness benefit for seasonal and temporary workers who have been employed at least 3 months in the last 12 months, shall be up to 75 days.

³⁵ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (2000).

Hence follows that in **Croatia** and in **Albania** the basic duration of sickness benefit is only 6 months. But in **Croatia** an invalidity pension will be paid if a disability lasts longer than 6 months, or – if the person needs to be additionally cured – the benefit may be granted for an additional period of 6 months. The situation in **Albania** is more serious. After 6 months of incapacity for work the benefit can be exceptionally prolonged up to another 3 months if the insured is not entitled to a disability pension. This means that for insured persons, who are not entitled to a disability pension, 9 months is the maximum duration of payment. This period of entitlement in Albania is not in compliance with the Revised Code and the Protocol, which require a length of 52 weeks in each case, or 78 weeks in any consecutive period of three years. The original Code only requires 26 weeks in each case. Nevertheless, the limitation of the sickness benefit (only 75 days) for seasonal and temporary workers who have been employed at least 3 months in the last 12 months also infringes the original Code.

3.5 Unemployment benefit

3.5.1 Revised European Code of Social Security³⁶

a. Contingency

Under the Revised Code, Part IV comprises two contingencies (Article 19):

1. **Total unemployment:** the absence of earnings due to the inability to obtain suitable employment, in the case of a person protected who is capable of, available for and actually seeking employment.
2. **Partial unemployment** (“unemployment, other than total”): a loss of earnings, due to either (by choice of the contracting state)
 - a. a **reduction of the working hours** in comparison with the normal or legal working time, for reasons other than the worker’s state of health or personal convenience, without termination of the work relationship; and/or
 - b. the **inability to obtain suitable full time employment**, in the case of an unemployed person who, while accepting part time employment, is capable of, available for and actually seeking full time employment.

The wording “**absence of earnings**” implies that the Revised Code in principle also protects persons who were not employed or economically active in the past, e. g. school or university graduates and parents of young children returning to paid employment. Indeed the Revised Code allows contracting states to choose from a catalogue with categories of persons (“menu approach”, see chapter 2.4.1, *supra*).

b. Further conditions for entitlement

A crucial condition for entitlement is that the unemployed person is **capable of and available for work**. This capability and availability can only be expected in what concerns **suitable work** (*cf.* the wording “suitable employment”) i. e. the unemployed cannot be required to take up **any work**. The suitability of employment shall be assessed

In assessing the suitability of employment, states are required to take account of the following factors (Article 19 § 2):

- age and
- experience of the unemployed person, as well as
- the duration of his service in the previous occupation,
- the duration of unemployment,
- the state of the labour market, and
- the employment’s impact on his family and personal circumstances.

³⁶ See Explanatory Report, §§ 162 et seq.

c. Benefits

The state has to provide **periodical benefit in cash** (Article 21). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

d. Preventive measures

Besides, states are obliged to take certain preventive measures. They must offer to the persons protected occupational guidance, training, retraining and integration or re-integration services to help keep or obtain suitable employment (Article 25 § 1). This obligation does not only exist in the aforementioned contingencies, but also when the persons protected are threatened with **imminent unemployment**. States shall also provide aids to occupational mobility and, if necessary, geographical mobility (Article 25 § 2).

e. Qualifying period

To avoid abuse, qualifying periods for entitlement to unemployment benefit are admissible (Article 22). They can be based on a specified period of employment and/or residence. The Code sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The Revised Code expressly allows adapted waiting periods for **seasonal workers** and for the persons who are protected irrespective of the fact that they were not employed or economically active in the past (Article 22 §§ 2 and 3).

f. Period of entitlement

In principle, benefits are to be granted throughout the whole contingency or until the payment of old-age, invalidity or rehabilitation cash benefit (Article 24). There is a fixed limit only for the case of total unemployment: at least **39 weeks** during any period of **24 months**. In the case of partial unemployment, national legislation may prescribe even shorter periods of entitlement.

Systems with **variable limits** for the duration of benefits based on the length of contribution periods or based on the relation between contribution periods and benefits received must guarantee a **weighted average duration** of benefit of at least **39 weeks or half the length of the qualifying period** (Article 24 § 2).

g. Waiting period

To encourage unemployed persons to take up a new job as soon as possible, the Revised Code allows a waiting period of up to **three days** for each case of unemployment (except for temporary employment as defined by national laws or regulations) **or six days** within any period of **12 months**, by choice of the contracting state (Article 23 § 1). The Revised Code expressly allows adapted waiting periods for **seasonal workers** (Article 23 § 2).

3.5.2 European Code of Social Security

a. Contingency

The contingency is any suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of and available for work (Article 20).

The wording “suspension” implies that the Code covers only **persons who already had a job** before they became unemployed. Accordingly, Part IV of the Code does not protect school or university graduates, parents of young children returning to paid employment etc.

What constitutes a “**suspension of earnings**” is to be defined by national laws or regulations. This means that states can freely decide whether unemployment is to be paid in case of:

- voluntary unemployment;
- involuntary unemployment (due to the economic situation of the employer);
- dismissal (due to personal misconduct and/or incompetence of the employee);

- constructive dismissal (due to intolerable working conditions);
- industrial action (due to strike or lockouts).

Article 68 of the Code explicitly mentions voluntary unemployment and industrial action as justifiable reasons for an interruption in the grant of unemployment benefit.

b. Further conditions for entitlement

A crucial condition for entitlement is that the unemployed person is **capable of and available for work**. This capability and availability can only be expected in what concerns **suitable work** (*cf.* the wording “suitable employment”) i. e. the unemployed cannot be required to take up **any work**. The notion of “suitable employment” obliges states to take into consideration many factors such as

- qualification,
- experience,
- age, and
- motivations of the unemployed person, as well as
- duration of employment in the previous job, and
- family and personal circumstances.

This prohibits practices by states which are too restrictive. For instance, the Code does not allow to reverse the burden of proof by requiring the beneficiary to prove that he or she had good reason not to accept a position which he or she finds unsuitable.³⁷

c. Benefits

The state has to provide **periodical benefit in cash** (Article 22). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

d. Preventive measures

Under the Protocol, states are furthermore obliged to provide facilities such as placement services, vocational training courses and assistance in their transfer to another district when necessary to find suitable employment (Article 24 § 6).

e. Qualifying period

To avoid abuse, qualifying periods for entitlement to sickness benefit are admissible (Article 23). They can be based on a specified period of employment and/or residence. The Code sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**.

The assessment by the Committee of independent experts if a qualifying period is excessive is primarily based on a comparative look at the qualifying periods in other countries, the economic context in the state concerned and the percentage of workers excluded. According to these criteria, a qualifying period of 540 days over the preceding 24 months in the case of Portugal was found to be excessive.³⁸

f. Period of entitlement

In principle, benefits are to be granted throughout the whole contingency (Article 24). The limits for the period of entitlement in weeks differ depending on the model applied by the state to define the personal scope (see chapter 2.4, *supra*):

³⁷ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the United Kingdom (1989).

³⁸ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Portugal (2000).

1. Insurance systems (systems based on employment):
 - a. at least **13 weeks** during any period of **12 months** (under the Protocol: 21 weeks); or
 - b. at least **13 weeks for each case** of suspended earnings (under the Protocol: 21 weeks).
2. Means test systems: at least **26 weeks** during any period of **12 months** (under the Protocol: throughout the contingency, i. e. as long as the beneficiary is unemployed, capable and available and continues to pass the means).

Systems with **variable limits** for the duration of benefits based on the length of contribution periods or based on the relation between contribution periods and benefits received must guarantee an **average duration** of benefit of at least **13 weeks** within **12 months** (Article 24 § 2; under the Protocol: 21 weeks).

g. Waiting period

To encourage unemployed persons to take up a new job as soon as possible, the Code allows a waiting period of up to **seven days** for each case of suspension of earning, except for temporary employment as defined by national laws or regulations (Article 24 § 3; under the Protocol: three days for each case of suspension or six days within any period of 12 months, by choice of the contracting state). The Code expressly allows adapted waiting periods for **seasonal workers** (Article 24 § 4).

3.5.3 Concrete assessment of the SISP-countries

The legislation of **Kosovo** does not foresee any benefits for the unemployed. The government is now planning to create an employment fund that will be established out of 1% of the employees' and the same of the employers' income. The scheme is intended to assist in creating new jobs and does not foresee any financial compensation for the unemployed.

Under the Revised Code, Part IV comprises two contingencies (Article 19): *Total unemployment* and *partial unemployment*. For partial unemployment there is no special scheme in **Croatia, Serbia, Montenegro** and **Bosnia and Herzegovina**. In **Macedonia** an unemployed person that finds a job working half-time is allowed to retain 50% of the unemployment benefit. In **Albania** a kind of partial unemployment benefit is paid during participation in special state and local public employment programmes. The earnings from the programme must not exceed the minimum wage and additionally the unemployment benefit is paid. Hence follows, that most of the assessed countries are not in compliance with the contingency required under the Revised Code. Nevertheless, the contingency prescribed under the original Code is fulfilled by the assessed countries, because under the Code partial unemployment is no contingency.

Moreover, there is a second reason why the contingency under the Revised Code but not under the original Code is problematic for the assessed countries. The Revised Code in principle also protects persons who were not employed or economically active in the past, e.g. school or university graduates and parents of young children returning to paid employment. Contrary to the Revised Code, the Code focuses on a "suspension of earnings". This means that it covers only persons who already had a job before they became unemployed. What constitutes a "suspension of earnings" according to the Code is to be defined by national laws or regulations. Hence follows that states can freely decide whether unemployment is to be paid in case of voluntary unemployment, involuntary unemployment, dismissal, constructive dismissal or industrial action. This is important for the assessed countries, because in their unemployment insurance schemes involuntarily unemployment is one of the main conditions for the entitlement.

Under the Code and the Revised Code a crucial condition for entitlement is that the unemployed person is *capable of and available for work*. This capability and availability can only be expected in what concerns *suitable work*. In **Croatia** unemployment benefit claimants must be involuntarily unemployed, capable of work, active job seekers and available for employment, aged 15 – 65 years, and registered with the Employment Institute. Similar conditions apply in **Bosnia and Herzegovina**. In **Albania** it is required that the unemployed persons are available to get employed, provided they are offered a paid and appropriate job.

According to the Code and the Revised Code the state has to provide periodical *benefit in cash*. This requirement is fulfilled in the assessed countries. In **Albania** the unemployment benefit is a flat rate of an amount to provide at least for a minimum living standard. In cases of participation in special public programs the unemployment benefit is paid, but the total amount can not exceed the minimum monthly wage. The beneficiary with dependent children, under 18 years of age, or 25 years, if studying or disabled, receive a flat-rate family supplement, payable in respect of each dependent child. In **Serbia** and in **Montenegro** within the unemployment insurance scheme the insured person is entitled to cash compensation, to pension and invalidity insurance and to health insurance. As part of the traditional role of the employment agencies in **Bosnia and Herzegovina** the entity-level agencies provide cash payments to individuals as unemployment assistance, as well as payments to their health care and pension insurance schemes. Likewise in **Croatia** sufficient benefits are provided.

Besides, states are obliged to take certain *preventive measures*. In most of the assessed countries some measures are offered. In the area of active employment programs the Federal Employment Bureau in **Bosnia and Herzegovina** provides loans, while the Employment Bureau in the Republic of Srpska provides grants as assistance to companies that submit programs for the creation of new jobs and organize or provide funding for the re-training of potential hires or for the continued education of employees. The Federation Employment Bureau is authorized to use its fund to assist cantons failing to collect sufficient contributions to fund cash assistance payments, as well as payments for health-care and pension insurance. Formally, the employment agencies are responsible for tracking/monitoring the situation in the labour market and have a brokerage role in finding employment. In practice, however, these activities are neglected. In **Albania** the persons, who are attending training and retraining courses, are entitled to unemployment benefit, if they are not paid for this period. If an unemployed person in **Serbia** wants to start self-employment activity cash assistance (one payment) can be provided as well as subvention for starting such activity, which is defined through the contract between that person and the National Office for Employment. In **Montenegro** unemployed persons are entitled to cash assistance during professional education or specialization. Unemployed persons in **Croatia** who undergo vocational training program and who are not eligible for unemployment benefit are entitled to unemployment assistance. Other entitlements are the reimbursement of vocational training expenses, a lump-sum assistance to persons employed out of their place of residence by mediation of Employment Institute and the reimbursement of travelling and removal costs (also in case of employment out of the regular place of residence). Moreover, in Croatia the Act on Occupational Rehabilitation and Employment of Disabled Persons contains the provisions about the following rights of disabled persons: The right to occupational rehabilitation and the right to employment and work under the general and special conditions provided.

It has to be taken into consideration that measures are of a great importance in the employment policy of the European Union. The following measures have to be taken: active and preventive labour market measures including early identification of needs, job search

assistance, guidance and training as part of personalised action plans, provision of the social services necessary to support the labour market inclusion of disadvantaged people and contribute to social and territorial cohesion and to the eradication of poverty. To attract more people to employment and to modernise social protection systems, the Commission proposes, inter alia, to promote a new lifecycle approach to work through a renewed endeavour to build employment pathways for young people and reduce youth unemployment; to support for working conditions conducive to active ageing etc.³⁹.

Hence follows that in the assessed countries the active employment policy lags behind the required standards of the European Union. For instance, none of the assessed countries reported on special measures concerning youth unemployment.

To avoid abuse, *qualifying periods* for entitlement to unemployment benefit are admissible under the Code and the Revised Code. In **Croatia** a previous consecutive employment period of 9 months within the last 24 months is required. There is no qualifying period for unemployed mothers caring for children under the age of one year. In **Albania** unemployment benefit is provided if the insured persons have contributed at least 12 months for each benefit contingency. In **Serbia** the unemployed must have been continuously insured for at least 12 months or for 18 months with interruptions. The maximum prescribed duration of these interruptions is one month. In **Macedonia** and **Montenegro** the right to unemployment benefit is reserved for unemployed persons who were continuously employed for at least 9 months or discontinuously employed for 12 months during the last 18 months. In **Bosnia and Herzegovina** the insured person must have paid contributions for unemployment during a period of minimum 8 months continually in the last 12 months or of minimum 8 months with interruptions in the last 18 months before unemployment. In my opinion these qualifying periods are in compliance with the Code and the Revised Code because they are not longer than necessary to avoid abuse.

The Revised Code allows a *waiting period* of up to three days for each case of unemployment or six days within any period of 12 months. The original Code allows a waiting period of up to seven days for each case of suspension of earnings, except for temporary employment as defined by national laws or regulations. In **Croatia** and **Albania** there is no waiting period. In **Bosnia and Herzegovina** the waiting period is 30 days after the claim was registered. This very long waiting period is not in conformity with the Code and the Revised Code.

In the case of total unemployment the Revised Code allows a *period of entitlement* that is at least 39 weeks during any period of 24 months. In the case of partial unemployment, national legislation may prescribe even shorter periods of entitlement. Systems with variable limits for the duration of benefits based on the length of contribution periods must guarantee a weighted average duration of benefit of at least 39 weeks or half the length of the qualifying period. Concerning **Macedonia** it is only stated that the financial benefit payment period depends on the period during which the unemployed person has been insured for unemployment. An unemployed person that has been insured for more than 15 years, but still lacks at least 5 years to become eligible for old-age pension, is paid a financial benefit until his/her employment, i.e. until any of the conditions for termination of the financial benefit right is not fulfilled. In **Albania** the unemployment benefit period is up to 12 months if the unemployment is continuous. If the unemployment is interrupted by periods of work the benefit is payable over 2 years, provided that the unemployment benefit period, as a whole,

³⁹ See Integrated guidelines for growth and jobs (2005-200). Communicaton from the President of the Commission, of 12 April 2005, including a proposal for a Council Decision on guidelines for the employment policies for the Member States (under Article 128 of the EC Treaty) – Part 2 COM (2005) 141.

does not exceed 365 calendar days. For persons who are attending unremunerated training and retraining courses, the unemployment benefit can be paid for up to 18 months. Subject to previous period of employment completed, the duration of the entitlement is defined from 78 to 390 days in **Croatia**⁴⁰. Unemployed persons who have previously completed 35 years (men) or 30 years of employment periods (women), maintain the entitlement until the engagement in new employment or until another cancelling condition arises. The duration of the benefit is extended to women during pregnancy and for the period until the child attains one year, if this entitlement does not coincide with another similar entitlement from another scheme. Moreover, the benefit is extended during temporary incapacity for work up to 3 months. A system with variable limits for the duration of benefits based on the length of contribution periods also applies in **Serbia**⁴¹. Moreover, in **Bosnia and Herzegovina** the duration of granting depends on the number of unemployment insurance years. The minimum duration of the payment in the Republic of Srpska is 3 months, whereas in the Federation of Bosnia and Herzegovina it is 6 months. The maximum duration of the payment is 12 months⁴².

Hence follows that the period of entitlement in **Bosnia and Herzegovina** and in **Serbia** is not in conformity with the Revised Code. For **Croatia** it is uncertain if the requirements of the Revised Code are fulfilled. According to the original Code, systems with variable limits for the duration of benefits based on the length of contribution periods must guarantee an average duration of benefit of at least 13 weeks within 12 months (under the Protocol: 21 weeks). These prerequisites of the Code and the Protocol are also fulfilled by **Croatia, Bosnia and Herzegovina** and **Serbia**. Concerning **Macedonia** and **Montenegro** an assessment is not possible.

3.6 Old-age benefit

Although the contingency itself is the same in the original and the Revised Code, the growing financial tensions which pension systems face today have led to a considerable shift in the underlying philosophy of the social security instruments of the Council of Europe. Instead of suspension or reduction of benefits, the Revised Code introduces more flexibility in the arrangement of pension systems, e. g. early and deferred pensions.

3.6.1 Revised European Code of Social Security⁴³

a. Contingency

The contingency is survival beyond a prescribed age (Article 26 § 1). In principle, the prescribed age shall not be higher than **65 years**. National legislation may prescribe a higher retirement age if **demographic, economic and social criteria justify a higher age**.

⁴⁰ 9 consecutive months or 12 interrupted months in the last 18 months: 78 days; 12 consecutive or 6 interrupted months in the last 24 months: 104 days; more than 3 years: 130 days; more than 4 years: 156 days; more than 5 years: 182 days; more than 6 years: 208 days; more than 7 years: 234 days; more than 8 years: 260 days; more than 9 years: 286 days; more than 10 years: 338 days; more than 15 years: 364 days; more than 20 years: 390 days.

⁴¹ The entitlement to cash compensation lasts 3 months if the unemployed has completed 1 to 5 years of insurance, 6 months for 5 to 15 years of insurance, 9 months for 15 to 20 years of insurance, 12 months for more than 20 years of insurance, 24 months for more than 20 years of insurance and 61 (men) or 56 (women) years of age and 24 months for 8 (men) or 33 (women) years of insurance and 51 years of age.

⁴² Federation of Bosnia and Herzegovina: insurance period of 8 months to 10 years: 6 months; insurance period of 10 to 25 years: 9 months; insurance period over 25 years: 12 months. Republic of Srpska and Brcko District: 3 months for insurance service up to 5 years; 6 months for insurance service of 5 to 15 years; 9 months for insurance service of 15 to 25 years; 12 months for insurance service over 25 years.

⁴³ See Explanatory Report, §§ 201 et seq.

In the case of a retirement age of 65 years or more, contracting states are required to allow particular groups of people to retire earlier (Article 27 § 1). At least **one** of the following categories must be granted old-age benefit before the age of 65 years (**early pension**):

- a. persons who have been engaged in **arduous or unhealthy occupations**;
- b. persons who are **incapable of work**—compliance with this provision is assumed *ipso iure* if the signatory state has accepted Part IX (invalidity benefit);
- c. persons who are approaching retirement age and who are facing **long-term unemployment** (i. e. unemployment for at least one year)—compliance with this provision is again assumed *ipso iure* if the signatory state has accepted Part IV (unemployment benefit);
- d. persons who have **fulfilled the qualifying period** despite being younger than the fixed retirement age.

Beneficiaries of these early pensions must receive the same amount of old-age benefit as persons who work until the regular retirement age.

Instead of introducing early pensions for one of the aforementioned categories of people, contracting states may also introduce one of the following two models:

1. combined model of reduced early pension and deferred pension:
 - a. **reduced early pension:** an early pension may be paid at a specified age and reduced in accordance with the time over which the pension is paid early and any periods of employment, insurance or residence that the applicant has actually fulfilled (Article 27 § 2.a); **and**
 - b. **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 or if they wish to obtain a higher benefit reflecting their extra period of continued employment, economic activity or residence (Article 27 § 2.b);

or

2. **part-time pension model:** people are allowed to continue to work (before and/or after retirement age) on a part-time basis while they receive a proportionally reduced pension (Article 27 § 3).

These flexible models enable contracting states to discourage early retirement and to encourage at the same time deferred retirement in order to ease financial pressure on social security systems. Part-time pension model are also believed to have positive effects on both economy and society (improved transfer of know-how, smoother transition towards retirement).

b. Benefits

The social security scheme has to provide **periodical benefit in cash** (Article 29). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Qualifying period

Of course, the provisions on qualifying periods play a key role in the field of pensions. Entitlement to old-age benefits may be based upon

- **periods of contribution,**
- **periods of occupational activity** or
- **periods of residence.**

Besides, the Revised Code distinguishes between two types of pensions:

1. **Full pension:** It is granted after the maximum qualifying period.

2. **Partial pension:** It is granted after a shorter qualifying period and is proportionately lower.

The uniform qualifying period under the Revised Code is **40 years of contributions, occupational activity or residence** (Article 29 § 2). However, even **longer qualifying periods** may be required in systems based on economical activity or residence (Article 29 § 3).

The Revised Code also takes into consideration persons who do not fulfil the necessary qualifying periods (Article 29 § 4). The uniform qualifying period for partial pensions is **15 years of contributions, occupational activity or residence** (Article 30). These reduced benefits may be reduced proportionally to the period of contribution, occupational activity or residence.

d. Period of entitlement

The benefit has to be paid throughout the contingency, i. e. until the beneficiary dies (Article 31).

e. Waiting period

Under the Code, waiting periods are not admissible in the field of old-age benefit.

3.6.2 European Code of Social Security

a. Contingency

The contingency is survival beyond a prescribed age (Article 26 § 1). In principle, the prescribed age shall not be higher than **65 years**. National legislation may prescribe a higher retirement age only if the number of residents having attained that age equals at least **10 % of the work force**, defined as the number of residents who are below that retirement age but above the age of 15 years (Article 26 § 2). This demographic factor allows in fact a great flexibility—in Austria, a retirement age of 74 years (!) would be tolerable under the Code.⁴⁴ (Under the Protocol, this flexibility clause is only available for systems based on residence or economic activity, making 65 years the absolute maximum in employment-based systems.)

b. Benefits

The social security scheme has to provide **periodical benefit in cash** (Article 28). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Benefit suspension or reduction

The old-age benefit may be **suspended** completely if the beneficiary is engaged in any gainful activity as prescribed by national legislation (Article 26 § 3).

Furthermore, the old-age benefit may be **reduced** in the following cases:

1. insurance systems (“contributory benefits”—based on employment or economic activity, financed from social security contributions): if the **earnings** of the beneficiary exceed a certain amount;
2. universal schemes (“non-contributory benefits”—based on a means test, financed from general taxation): if the **earnings or/and any other means** of the beneficiary exceed a certain amount (under the Protocol, this option to reduce old-age benefit is abandoned).

“Earnings” refers to income from economic activity, “means” refers to any source of income (e. g. rental income, maintenance payments by ex-spouses).

⁴⁴ Calculation based on 2004 population statistics in STATISTIK AUSTRIA (ed.), Statistisches Jahrbuch 2006, p. 48.

d. Qualifying period

Entitlement to old-age benefits may be based upon

- **periods of contribution,**
- **periods of employment** or
- **periods of residence.**

Besides, the Code distinguishes between two types of pensions:

1. **Full pension:** It is granted after the maximum qualifying period.
2. **Partial pension:** It is granted after a shorter qualifying period and is proportionately lower.

The Code offers numerous models to contracting states for the organization of full and partial pensions, depending on whether entitlement is based on employment, economic activity or residence (*cf.* chapter 2.5, *supra*):

1. Insurance systems:
 - a. Systems based on employment: **30 years of contributions or employment** (Article 29 § 1.a).
 - b. Systems based on economic activity: fulfilment of a qualifying period and payment of a yearly average number of contributions, both as **defined by national legislation** (Article 29 § 1.b), e. g. fulfilment of a qualifying period of 20 years with an average of 45 weeks of paid contributions per year.
2. Universal schemes (systems based on residence): **20 years of residence** (Article 29 § 1.a).

The above values are for the standard minimum replacement ratio set by the Code, which is at **40 %** (see chapter 3.12, *infra*). However, contracting states may base calculation of full pensions on a lower replacement ratio of **30 %**, but with much shorter qualifying periods (Article 29 § 3):

1. Insurance systems:
 - a. Systems based on employment: **10 years of contributions or employment.**
 - b. Systems based on economic activity: no change.
2. Universal schemes (systems based on residence): **5 years of residence.**

The Code also takes into consideration persons who do not fulfil the necessary qualifying periods. A **reduced pension** is due after the following periods:

1. Insurance systems:
 - a. Systems based on employment: **15 years of contributions or employment** (Article 29 § 2.a).
 - b. Systems based on economic activity: fulfilment of a qualifying period of **half the number of contributions** usually prescribed by national legislation (Article 29 § 2.b).
2. Universal schemes (systems based on residence): no particular provisions.

The Committee of experts generally applies a strict interpretation of the provisions on maximum qualifying periods. As a result, a new pension scheme introduced in Italy in 1992 was rejected because it progressively extended qualifying periods for partial pensions from 15 to 20 contributory years. Although another pension reform in 1995 reduced the qualifying period to five years of contribution, the Committee of experts still maintains its disapproval, as the new scheme is only applicable to new entrants on the labour market, i. e. to a minority of the work force.

e. Period of entitlement

The benefit has to be paid throughout the contingency, i. e. until the beneficiary dies (Article 30).

f. Waiting period

Under the Code, waiting periods are not admissible in the field of old-age benefit.

3.6.3 Policy documents of the European Union

The European Union aims at the modernisation of the social protection. Among others this applies to the pension systems. The fundamental objective is to provide people with a securely funded and adequate pension. This may involve finding an appropriate balance between funded and pay-as-you-go systems. What shall be done is to anticipate the impact of demographic ageing on social protection systems. Moreover, the design and reform of pension systems should discourage early withdrawal from the labour market, encourage flexibility in retirement arrangements and promote active participation by older people in the light of the Community. Poverty among older women, resulting from their low participation in employment combined with changes in household structures shall be combated and active ageing shall be promoted⁴⁵.

Hence, with a view to ensuring the long term sustainability of the pension systems of the European Union the Commission is launching a plan to modernise the systems. The Commission invites Member States to co-ordinate their efforts and exchange views and information on practices and reforms, and proposes a series of objectives. One of these objectives is to reinforce the element of solidarity in pension systems, i.e. avoid exclusion because of low income. Another important point is the maintenance of the adequacy of pensions and the ensuring of consistency of pension schemes within the overall pension system. The three pillars of pension systems, operating in combinations decided by the Member States, should enable people to remain financially autonomous in old age. Moreover, the Member States shall ensure sound and sustainable public finances. Reforms must ensure that the tax burden arising from public pensions is set at an appropriate level and that other essential public expenditures are not crowded out⁴⁶.

A certain number of Member states have already undertaken reforms which concern the three pillars of the pension systems, namely basic public schemes, occupational schemes and individual pension plans. Reforms of public pension schemes mainly focus on controlling the growth of expenditure, whereas improvements in occupational and personal pension scheme are often necessary to allow them to play a greater role in income provision for older people⁴⁷.

3.6.4 Concrete assessment of the SISP-countries

Under the Code and the Revised Code, in principle, the prescribed age shall not be higher than *65 years*. But according to the Revised Code either a not reduced *early pension* must be granted or the states have to adopt one of the two models prescribed under the Revised Code. These two models are a *combined model of reduced early pension and deferred pension* or a *part-time pension model*. In **Croatia** the old-age pension is a periodic benefit based on social insurance principle and determined by previous earnings and employment history. The first pillar is financed on a pay as you go system and is supplemented by a second pillar based on a funded system. During the transitional period from 1999 – 2008 the previous legal retirement ages of 60 years (men) and 55 years (women) are gradually increased by 6 months per annum.

⁴⁵ See Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. A concerted strategy for modernising social protection [COM (1999)347].

⁴⁶ See Communication from the Commission to the Council, to the European Parliament and to the Economic and Social Committee. The Future Evolution of Social Protection from a Long-Term Point of View: Safe and Sustainable Pensions [COM (2000) 622].

⁴⁷ See Communication from the Commission to the Council, to the European Parliament and to the Economic and Social Committee. The Future Evolution of Social Protection from a Long-Term Point of View: Safe and Sustainable Pensions [COM (2000) 622].

The pensionable age is currently 63 years (men) and 58 years (women). In the future the age requirement will be 65 (men) and 60 (women). Likewise, early retirement age has gradually been increased by 6 months every year and this shall continue until 2008 when it will be 60 (men) and 55 (women). It currently stands at 58 years (men) and 53 years (women). The permanent reduction of the amount of old-age pension is 0,3% per month of anticipation. It is possible to work until 70 years of age if a person is deemed to be irreplaceable. The employer is obliged to advertise the vacancy for this persons's job once a year after the employee attains 65 until he/she is 70. If nobody applies or if nobody is suitable for the job, the person is deemed to be irreplaceable in that period.

Hence follows that in **Croatia** a regular and an early old-age pension are provided. Beneficiaries of the early pension do not receive the same amount of old-age benefit as persons who work until the regular retirement age, because the amount of old-age pension is reduced (0,3% per month of anticipation). This means that the requirements of the Revised Code will only be fulfilled if the reduced early pension is combined with a model of deferred pension. But in Croatia people are only allowed to continue to work beyond 65 (men)/60 (women) years of age if they are deemed to be irreplaceable. This is no real model of deferred pension required under the Revised Code. Therefore the Croatian old-age pension scheme is not in compliance with the Revised Code.

In **Bosnia and Herzegovina** each of the entities has its own separate regulations in the area of pension insurance. In the Federation of Bosnia and Herzegovina the retirement age is 65 years. In case of an early pension the retirement age is 60 years (men) and 55 years (women). In the Republic of Srpska the required age for the standard pension is 65 years (men) and 60 years (women). In case of an early pension in the Federation of Bosnia and Herzegovina the permanent reduction is 0,5% for each year for women and 1% for each year for men. In the Republic of Srpska the permanent reduction is 1,33% for each year for women and 1,5% for each year for men. A deferment of the pension is not provided in Bosnia and Herzegovina. Hence follows that, like in Croatia, the old-age pension scheme of Bosnia and Herzegovina is not in compliance with the Revised Code, because the reduced early pension is not combined with a model of deferred pension.

Such a combined model of reduced early pension and deferred pension is provided in **Albania**. There are three kinds of old-age pension, which are full pension, partial pension and reduced pension. For the full and the partial old-age pension the pension age is 65 years (men) and 60 years (women). Moreover a full old-age pension is granted to mothers with 6 or more children, when they reach the age of 50 and fulfil the required employment period (30 years of insurance). If the insured reach the age of 62 (men) or 57 (women) and the qualifying period is fulfilled a reduced old-age pension is provided. In Albania people are allowed to continue to work beyond the regular retirement age if they require more time to fulfil the minimum qualifying period or if they wish to obtain a higher benefit reflecting their extra period of continued employment or economic activity. In **Serbia** the retirement age is 65 years (men) and 60 years (women). In case of early pension the retirement age is 63 (men) and 58 (women). There is another form of early pension that requires an age of 53 years (both men and women). For obtaining an old-age pension insured persons must stop with economical activity, but, on the other hand, after getting a pension person can start with professional activity again. Pensioners who complete more than 12 months of insurance periods on basis of such activities are entitled to recalculation of old-age pension. Hence follows that people are allowed to work beyond the regular retirement age.

In **Montenegro** the age conditions for entitlement to old-age pension raised for women from 55 to 60 years of age and for men from 60 to 65 years of age. This law will enter into force gradually. Every year (starting from 2004 till 2014) the age limit will be six months higher. At this moment the entitlement conditions for old-age pension are: age of 61 (men) and 56 (women) and 20 years of pensionable periods; age of 65 (men) and 60 (women) and 15 years of insurance periods; age of 55 (both men and women) and 40 (men) or 35 (women) years of insurance periods. In the report of Montenegro there is no information if a deferment of the pension is provided.

A three-pillar public-private mix pension system has been adopted in **Macedonia**. The first pillar (obligatory pension insurance based on generational solidarity) and the second pillar (fully funded pension insurance based on individual capital savings) are obligatory. The retirement age is 64 (men) and 62 (women). The person can continue working part time after fulfilling the conditions for the old age pension but he/she is not entitled to a pension for this period, not even a proportionally reduced one. In **Kosovo** the mandatory pension scheme consists of two forms of pensions: basic pension and individual savings pensions. All permanent Kosovo residents over the age of 65 years are entitled to the basic pension, which is a fixed income. The participants of the individual savings pension schemes (contribution based scheme) are free to select one of following types of annuity after reaching the age of 65: a single life annuity payable until the death of the participant; a single life annuity guaranteed for a period of at least 5 years; a survivors' annuity payable for the life of the participant and then to his/her spouse; a survivors' annuity payable for the life of the participant and then to his or her spouse for the remainder of his/her life with a guarantee period of at least 5 years. According to the Revised Code the mandatory pension schemes in **Kosovo** and **Macedonia** are problematic because neither an early pension is provided nor one of the alternative models is realized. The alternative models are a combined model of reduced early pension and deferred pension and a part-time pension model (see chapter 3.6.1.1). Therefore the obligatory old-age pension schemes in Kosovo and Macedonia are not in compliance with the Revised Code.

Taking into consideration the policy documents of the European Union it has to be pointed out that many of the assessed countries made reforms to anticipate the impact of demographic ageing on social pension systems, e.g. the (early) pension age was raised. Nevertheless this is not enough. The design and reform of their pension systems should discourage early withdrawal from the labour market, encourage flexibility in retirement arrangements and promote active participation by older people in the light of the Community. Once again it has to be pointed out that there are some countries where it is not possible to defer the pension.

The provisions on *qualifying periods* play a key role in the field of pensions. In **Croatia** the minimum qualifying period for an old-age pension is being gradually reduced. In 1999 it was 20 years and by 2008 a pension may be claimed after 15 years of qualifying periods. Currently the qualifying period is 18 years. For the early retirement the qualifying period is 35 years (men) or 30 years (women). In the Federation of **Bosnia and Herzegovina** and in the Republic of Srpska for the standard pension a working period of 40 years is required. In case of an early pension an working period of 35 years (men) or of 30 years (women) has to be fulfilled in the Federation of Bosnia and Herzegovina. In the Republic of Srpska only 20 years of working period are required in case of an early pension. In **Albania** the qualifying period for the full and the reduced old-age pension is 35 years. If an insured person has less than 35 years but more than 15 years of insurance the qualifying period for a partial pension is fulfilled. In **Serbia** and in **Montenegro** for the standard pension 15 years of pensionable periods are required. For the early pension a pensionable period of 20 years has to be fulfilled.

The second early pension (age of 53 in Serbia and 55 in Montenegro) requires 40 (men) or 35 (women) years of insurance periods. In Serbia for persons working in occupations which are dangerous, difficult and harmful to health (mines, chemical industry, oil production etc.) or occupations in which after attaining certain age they can not perform successfully (pilots, opera singers etc.) every year of insurance periods is calculated as a longer period. For every year of insurance in such occupations, depending upon the profession, two, three, four or six months of insurance periods are added. The additional contribution rates for such periods are prescribed and paid by employers (not the employee) and self-employed persons. Insurance periods are calculated in increased duration (adding three months for every year) for the following categories: persons with body damage of 70% and higher; persons with military invalidity; blind persons; persons with muscular dystrophy or similar muscular or neuromuscular diseases, paraplegia, cerebral or child paralysis and sclerosis multiplex. Age eligibility conditions for all insured persons who's insurance periods are calculated in longer duration are proportionally lowered for one year for every six, five, four or three years spent in such occupation depending on the degree of increase of insurance periods. In **Macedonia** similar rules apply. In principle an insurance period of at least 15 years is required. However, people engaged in certain professions will receive additional credit for the time spent working for example in the following occupations: 12 months of employment as professional drivers, medical personnel in the institutions for people with mental handicap will be treated as 14 months of insurance period; 12 months of employment in the police will be treated as 16 months of insurance period; 12 months of employment as a miner will be treated as 18 months of insurance period.

Concerning the qualifying periods **Bosnia and Herzegovina** is not in compliance with the Revised Code because the requirement that the uniform qualifying period for partial pensions is 15 years of contributions, occupational activity or residence is not fulfilled.

3.7 Work accident and occupational disease benefit

Part VI combines long-term and short-term benefits which are only linked among one another in so far as they are all directly related to a worker's employment duties.

In the original Code, the title of Part VI was "employment injury benefit". The new designation "work accident and occupational disease benefit" should reflect the enhanced scope of this social risk in the Revised Code.

3.7.1 Revised European Code of Social Security⁴⁸

a. Contingency

Part VI covers four contingencies (Article 32):

1. the **need for medical care**;
2. initial or temporary **incapacity for work** involving suspension of earnings;
3. total **loss of earning capacity** or partial loss in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and
4. in the case of the victim's death, the **loss of support** suffered by the surviving spouse and children;

each due to a **work accident or occupational disease**.

The Revised Code stipulates that the national legislation's definition of "work accident" **must include the way to or from work** (Article 33).

⁴⁸ See Explanatory Report, §§ 244 et seq.

The concept of “occupational disease” is an innovation of the Revised Code. It relies on a list of 29 occupational diseases contained in a schedule to Part VI and allows contracting states to choose between three options (Article 34 § 1):

- a. The state recognises all of the listed diseases as occupational diseases (“**list method**”). Still, the Revised Code allows contracting states to prescribe conditions before the disease is recognised as related to work (e. g. the applicant may have to prove that he or she was exposed to a particular substance) or to prescribe minimum periods of exposure to certain hazards before a disease is recognised.
- b. The state establishes a **general definition** which enables at least the listed diseases to be regarded as occupational diseases. This allows a more abstract approach in national legislation.
- c. The state recognises at least $\frac{5}{6}$ of the listed diseases (i. e. 25 out of 29) as occupational diseases and establishes a general definition (“**mixed system**”). The diseases on the list are automatically recognised as occupational diseases (under the prescribed conditions mentioned before). In addition, if the victim can prove that his or her disease was caused by his or her employment, he or she can also claim a benefit.

The list of occupational diseases can be amended by a committee and must be reviewed at least every five years (Article 34 § 2).

b. Benefits

Corresponding to the four different contingencies, there are four different types of benefit:

1. **Medical care** (Article 36): This **benefit in kind** is very similar to the one granted under Part II (see chapter 3.2, *supra*), but its minimum range reaches further than that for non-work-related injuries and illnesses, covering also nursing care at home, in a hospital or another medical institution, convalescent homes and sanatoriums as well as provision and maintenance of prostheses, including dental and surgical prostheses and eyeglasses, and finally emergency care for victims of serious accidents and follow-up care for victims of slight injuries at the place of work. Co-payments are not admissible.
2. **Benefit for temporary incapacity for work** leading to a suspension of earnings (Article 37): This benefit is to be provided as a **periodical benefit in cash**.
3. **Benefit for permanent reduction in capacity for work** (Article 38): In principle, this benefit is to be provided as a **periodical benefit in cash**. If the incapacity is only **partial**, the benefit may be reduced proportionally to the actual loss of working capacity (Article 38 § 1.b). The benefit can be converted into a **lump sum** (not less than periodical payments for three years) if the reduction in working capacity is **below 25 %** or if the authority has reason to believe that the lump sum will be utilised in an unquestionably advantageous manner (Article 38 § 3).
4. **Benefit in the case of the victim’s death** for the surviving spouse and children (Article 39): This benefit is to be provided as a **periodical benefit in cash**. In addition, a **lump-sum funeral grant** shall be paid to his surviving dependants.

The minimum amounts for the periodical benefits in cash are to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

In addition, contracting states are obliged to take **preventive measures** (Articles 42 and 43).

c. Qualifying period

Under the Revised Code, qualifying periods are not admissible in the field of work accident and occupational disease benefit (Article 40).

d. Period of entitlement

Benefits must be granted throughout the contingency (Article 41).

e. Waiting period

Under the Revised Code, waiting periods are not admissible in the field of work accident and occupational disease benefit.

3.7.2 European Code of Social Security

a. Contingency

Part VI covers four contingencies (Article 32):

1. a **morbid condition** (for a definition see chapter 3.2, *supra*);
2. **incapacity for work** resulting from a morbid condition and involving suspension of earnings;
3. total **loss of earning capacity** or partial loss in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and
4. the **loss of support** suffered by a widow incapable of self-support or by a child as the result of the death of the breadwinner (under the Protocol: also loss suffered by a widow who is capable of self-support);

each due to accident or a prescribed disease **resulting from employment**.

The Code contains no definition of “employment injury”, which allows contracting states to decide, *inter alia*, whether travel between the worker’s home and his or her place of work are covered.

b. Benefits

Corresponding to the four different contingencies, there are four different types of benefit:

1. **Medical treatment of a morbid condition** (Article 34): This **benefit in kind** is very similar to the one granted under Part II (see chapter 3.2, *supra*), but its minimum range reaches further than that for non-work-related injuries and illnesses, covering also home visits from specialists, dental care, nursing care at home, in a hospital or another medical institution, convalescent homes and sanatoriums as well as provision and maintenance of prostheses, including dental and surgical prostheses and eyeglasses.
2. **Benefit for temporary incapacity for work** leading to a suspension of earnings (Article 36): This benefit is to be provided as a **periodical benefit in cash**.
3. **Benefit for permanent reduction in capacity for work** (Article 36): In principle, this benefit is to be provided as a **periodical benefit in cash**. If the incapacity is only **partial**, the benefit may be reduced proportionally to the actual loss of working capacity (Article 36 § 2). The benefit can be converted into a **lump sum** if the reduction in working capacity is only small or if the authority is satisfied that the lump sum will be properly utilised (Article 36 § 3).
4. **Benefit in the case of loss of the breadwinner** for the wife incapable of self-support or for the child (Article 36; under the Protocol: also for the wife capable of self-support): In principle, this benefit is to be provided as a **periodical benefit in cash**. The benefit can be converted into a **lump sum** if the authority is satisfied that the lump sum will be properly utilised (Article 36 § 3).

The minimum amounts for the periodical benefits in cash are to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

In addition, contracting states must cooperate with vocational rehabilitation services to facilitate reintegration of injured persons into the labour market (Article 35).

c. Qualifying period

Under the Code, qualifying periods are not admissible in the field of employment injury benefit. Nevertheless, there is no obligation to grant benefits for accidents or diseases which occurred outside the territory of the contracting state (Article 37).

d. Period of entitlement

Benefits must be granted throughout the contingency (Article 38).

The Committee of experts continuously applies a strict interpretation of the provisions on duration of payments. For instance, it rejected Greek legislation which abolished partial pensions for persons with a reduced working capacity below 50 % and replaced them with a sickness benefit for up to two years. According to the Committee's interpretation, turning a (reduced) long-term pension into a short-term benefit is a violation of the Code. Financial arguments cannot excuse states withholding certain benefits required by the Code.⁴⁹

e. Waiting period

Under the Code, waiting periods are not admissible in the field of employment injury benefit except for benefits in the case of **short-term incapacity** for work which may be subject to a waiting period of **three days for each case** of suspension of earnings.

3.7.3 Concrete assessment of the SISP-countries

Concerning work-related injuries and occupational diseases in **Kosovo** the submitted documents refer to UNMIK Regulation 2003/19 on Occupational Safety, Health and the Working Environment. This document relates a right based approach whereby the employee has the right to safe environment to work. According to the same legislation, the employer is obliged to provide a safe and healthy environment for work. Furthermore, the employer is liable for paying all the expenses related to the treatment all damage caused to the employee in the workplace. However, this regulation does not provide a work accident and occupation disease benefit scheme. Such a scheme does not exist in Kosovo.

The Revised Code stipulates that the national legislation's definition of "work accident" must include the *way to or from work*. This requirement is fulfilled in **Macedonia, Bosnia and Herzegovina, Albania, Croatia and Serbia**. In most of the assessed countries (**Albania, Bosnia and Herzegovina, Macedonia and Croatia**) the *concept of occupational diseases* relies on a list. It is not possible to estimate if these lists cover all 29 occupational diseases contained in the schedule to Part VI of the Revised Code. In **Serbia** a professional disease is a disease that has occurred during the insurance caused by long influence of processes and conditions at work.

In all of the assessed countries *medical care* required because of work injury and professional disease is covered by the health insurance (concerning the benefits see chapter 3.3.3). The problem is that the minimum range of medical care in connection with work injury and professional disease reaches further than that for non-work-related injuries and illnesses. It also covers nursing care at home, in a hospital or another medical institution, convalescent homes and sanatoriums as well as provision and maintenance of prostheses, including dental and surgical prostheses and eyeglasses, and finally emergency care for victims of serious accidents and follow-up care for victims of slight injuries at the place of work. According the descriptions of the health care benefits provided in the assessed countries the minimum range of medical care in connection with work injury and professional disease is not guaranteed.

⁴⁹ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Greece (1997).

Only in **Albania** a person suffering an employment accident or an occupational disease can be entitled to additional medical care, rehabilitation and retraining necessary to recover lost abilities.

Benefits for temporary incapacity for work are paid in **Serbia, Montenegro, Albania, Bosnia and Herzegovina, Croatia** and **Macedonia**. Like in most of the countries in **Serbia** and in **Montenegro** risks of temporary incapacity for work are covered by health insurance scheme (short-term benefits).

In principle, *benefit for permanent reduction in capacity for work* has to be provided as a periodical benefit in cash. In **Serbia, Montenegro, Bosnia and Herzegovina, Croatia** and **Macedonia** permanent incapacity for work is covered by the pension and invalidity insurance scheme (long-term benefit); permanent disabled persons are entitled to invalidity pension. In **Albania** there are different kinds of benefit: Benefit in respect of permanent working disability (at least 67% of working capacity lost), benefit in respect of partial permanent disability to work (at least 33% of loss of working capacity), benefit in respect of minor permanent incapacity of less than 33%, but more than 10% and full compensation. The benefit in respect of minor permanent incapacity of less than 33%, but more than 10% is a lump-sum paid at once. This payment of a lump-sum can be problematic because the Revised Code states that the benefit can only be converted into a lump sum (not less than periodical payments for three years) if the reduction in working capacity is **below 25%** or if the authority has reason to believe that the lump sum will be utilised in an unquestionably advantageous manner (Article 38 § 3). Under the original Code the benefit can be converted into a lump-sum if the reduction in work capacity is only small or if the authority is satisfied that the lump-sum will be properly utilised (Article 36 § 3).

Moreover, in some countries additional benefits are provided. In **Serbia** and in **Montenegro** a cash compensation for body damages is granted. It is an additional benefit provided within the scope of pension and invalidity insurance scheme. An insured person is entitled to a cash compensation for body damage provided that body damage is 30% or higher (in Montenegro 50% or higher) and that it is a consequence of work injury or professional disease. Body damage is defined as loss, essential damage, or substantial incapacity of certain organs or parts of the body which makes normal activities more difficult and requires more effort in fulfilling everyday life necessities, regardless if they produce permanent incapacity for work (invalidity) or not. The amount of this benefit is calculated from the existing basis of benefit in Republican Fund for Pension and Invalidity Insurance of Employed at the moment the law came into force (since then this basis has been indexed as prescribed by the law). In **Macedonia** a reimbursement for the part-time work and a reimbursement for reassignment are granted. The reimbursement for the part-time work is paid when a person's working capacity is reduced to such an extent that he/she can only work part-time. This periodic cash benefit makes up 100% of the difference in earnings between that person's full time job and his/her part-time one. The benefit plus any wages must not exceed 100% of the salary that the person was receiving at his/her old work place. Reimbursement for reassignment is paid when a person is forced to change to a different job as a result of an employment injury or occupational disease. Benefit is equal to 100% of the difference in earnings and paid during professional rehabilitation. The benefit plus any wages must not exceed 100% of the salary that the person was receiving at his/her old work place. In **Croatia** in case of physical damage a lump-sum cash benefit paid only in cases of employment injury or occupational disease is granted. Physical damage is defined as the loss or serious injury of an organ or a body part, regardless of whether working capacity is reduced or not.

For the surviving spouse and children a *benefit in the case of the victim's death* has to be provided as a periodical benefit in cash. In addition, a *lump-sum funeral grant* shall be paid to his surviving dependants. In **Serbia, Montenegro, Bosnia and Herzegovina, Albania, Croatia and Macedonia** widows/widower and children are entitled to survivors' pension. In **Serbia, Montenegro, Bosnia and Herzegovina, Croatia and Albania** the insured are also entitled to compensation of funeral expenses. In **Bosnia and Herzegovina** a lump-sum payment of 3 average monthly wages is granted. In **Montenegro** the amount of the reimbursement of funeral expenses is three average pensions in Montenegro paid in previous months. In **Serbia** reimbursement of funeral expenses from health insurance scheme is defined as 50% of average wage in Republic of Serbia in the previous month. If the deceased is transported for funeral in other place for more than 100 km this reimbursement is raised for 50% and if he/she is transported from or to another country it is raised for 100%. The pension and invalidity insurance scheme also provides reimbursement of funeral expenses. It is payable to the person who arranged (paid for) the funeral.

Under the original Code and the Revised Code, *qualifying periods* are not admissible in the field of work accident and occupational disease benefit. In **Serbia, Montenegro, Albania, Bosnia and Herzegovina, Croatia and Macedonia** there is no minimum insurance period required for obtaining benefits in kind, survivors' benefits and short-term and long-term benefits.

Moreover, under the Revised Code, *waiting periods* are not admissible in the field of work accident and occupational disease benefit. The same rule applies to the Code, except for benefits in the case of short-term incapacity to work which may be subject to a waiting period of three days for each case of suspension of earnings. In **Albania, Bosnia and Herzegovina, Serbia, Montenegro and Croatia** benefits are paid from the first day of incapacity to work. Moreover, in the documents concerning **Bosnia and Herzegovina** it is stated that the salary compensation for the injury at work or occupational disease is 100% of net wage, calculated and paid from the own means of the legal/physical person with which the insured is employed, for as long as he/she is incapable of work i.e. until the competent body decision on determining the insurant's invalidity takes effect. In **Serbia** the employer pays compensation for the first 30 days of incapacity and after that, if incapacity for work still exists, compensation is paid by Republican Institute for Health Insurance. In **Montenegro** for the first 60 days of incapacity the employer pays compensation and after that, if incapacity for work still exists, the Republican Fund for Health Insurance has to pay. Also in **Macedonia** payment of the salary compensation for up to 60 days of disability for work shall be made out of employer's funds, and as for absence for a period longer than 60 days, out of the Health Insurance Fund. Nevertheless, it is problematic that waiting periods seem to exist in Macedonia. Concerning the provision of benefits in kind in "Annex 2" of the Macedonian report it is explained that there is a waiting period from the confirmation of the employment injury/disease and the receipt of the benefits (the duration varies).

As it was mentioned above (see chapter 2.4.3) the Committee of Ministers decided that the sickness benefits scheme in the Netherlands, that required employers to pay sickness benefits for up to 52 weeks, considerably reduced the coverage of the risk of sickness and placed too much burden on the employers⁵⁰. Hence follows that not only sickness benefits but also work accident and occupational disease benefits may be paid by employers for the initial period, but not to an extent as in the Netherlands (52 weeks). Corresponding to this decision the

⁵⁰ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (2000).

period for which the employer has to pay is too long in **Bosnia and Herzegovina**, whereas the periods in **Serbia**, **Montenegro** and in **Macedonia** are in compliance with the Code and the Revised Code.

The Code and the Revised Code do not tolerate limited *periods of entitlement*. Benefits must be granted throughout the contingency. If temporary incapacity to work lasts for a longer period, at latest after one year of incapacity, in **Serbia** the Republican Institute for Health Insurance is obligated to direct such person, with necessary medical documentation, to competent fund for pension and invalidity insurance for a decision on his eventual invalidity (complete loss of work capability) i.e. entitlement to invalidity pension. In **Albania** the benefits in respect of temporary incapacity are granted for a period of up to 12 months. Likewise in **Bosnia and Herzegovina** the duration of the benefit for temporary incapacity to work is provided until the working capability is re-gained, or until the working capability or invalidity is finally certified, but not longer than 12 months. Once again an explanation in “Annex 2” of the **Macedonian** report is problematic. Concerning the duration of benefits in kind it is stated that the duration mostly depends on the injured person/employer and when the person/employer initiates the procedure. In **Croatia** there is no special regulation for the sick leave due to work injury or occupational disease; the general rules on sickness benefit apply (see chapter 2.4.3).

Hence, the problem is the limitation of the periods of entitlement concerning the benefit for temporary incapacity to work (**Albania** and **Bosnia and Herzegovina**). According the Code and the Revised Code benefits must be granted throughout the contingency. The Committee of experts continuously applies a strict interpretation of the provisions on duration of payments. For instance, it stated that turning a (reduced) long-term pension into a short-term benefit is a violation of the Code⁵¹. Hence follows that the assessed countries have to pay (reduced) pension for the full duration of the contingency.

3.8 Family benefit

3.8.1 Revised European Code of Social Security⁵²

a. Contingency

The contingency is responsibility for the maintenance of children (Article 45).

A “**child**” is essentially defined as a person under school-leaving age or under 16 years of age (Article 1). The contingency is based on individual rights of the children concerned, and it includes children of residents as well as children of retired and unemployed persons (Articles 46 and 49).

b. Benefits

States may choose between two types of benefit (Article 47):

- a. **periodical payments in cash**; or
- b. a **combination** of periodical payments, tax relief, benefits in kind or social services for families: **periodical benefit in cash** and **benefit in kind**.

The minimum amounts for the periodical benefits in cash are to be calculated according to autonomous rules, i. e. not to those set out in Part XI. There is no minimum level of benefit for each beneficiary, instead states can choose between three models which fix a minimum

⁵¹ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Greece (1997).

⁵² See Explanatory Report, §§ 307 et seq.

amount of expenditure for all entitled persons within the territory of the contracting state (Article 49):

total amount to spend for all protected children in the territory of the contracting state = gross domestic product × 1.5 %
or
minimum wage × 3 % × number of children of all residents in the contracting state
or
wage of an ordinary labourer (Article 72) × 3 % × number of children of all residents in the contracting state

This amount covers benefits in cash **and** benefits in kind.

c. Qualifying period

A maximum qualifying period of **six months of residence** is admissible only for systems which base entitlement on residence (Article 48).

d. Period of entitlement

Benefits must be granted throughout the contingency (Article 50), i. e. essentially until school-leaving age or until the age of 16 years.

e. Waiting period

Under the Revised Code, waiting periods are not admissible in the field of family benefit.

3.8.2 European Code of Social Security

a. Contingency

The contingency is responsibility for the maintenance of children (Article 40).

A “**child**” is defined as a person under school-leaving age or under 15 years of age, by choice of the contracting state (Article 1). (Under the Protocol: under school-leaving age, under 15 years, apprentices under 18 years and permanently incapable persons under 18 years as the first option, or persons under 16 years as the second option for contracting states.) The contingency is based on derived rights; the benefit is paid to the worker or economically active individual who is responsible for the maintenance of the child instead of the child himself.

b. Benefits

States may choose between three types of benefit:

- a. **periodical payments in cash;**
- b. the provision of **food, clothing, housing, holidays or domestic help** for families;
- c. a **combination** of periodical payments and benefits in kind.

The minimum amounts for the periodical benefits in cash are to be calculated according to autonomous rules, i. e. not to those set out in Part XI. There is no minimum level of benefit for each beneficiary, instead a minimum amount of expenditure for all entitled persons within the territory of the contracting state is fixed:

total amount to spend for all protected children in the territory of the contracting state = wage of the ordinary adult male labourer (Article 66) × 1.5 % (under the Protocol: 2 %) × number of children of all residents in the contracting state

This amount covers benefits in cash **and** benefits in kind.

The Committee of independent experts does not base its assessment of conformity of the level of family benefit on estimations. It always requires states to provide actual figures, so that standardized compliance is ensured in all contracting states.⁵³

c. Qualifying period

The maximum qualifying period is **one month of employment or contributions or six months of residence** (Article 43).

d. Period of entitlement

Benefits must be granted throughout the contingency (Article 45), i. e. under the Code until school-leaving age or until the age of 15 years, by choice of the contracting state.

e. Waiting period

Under the Code, waiting periods are not admissible in the field of family benefit.

3.8.3 European Social Charter

According to **Article 16 of the European Social Charter**, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix to the European Social Charter (revised), shall be equally treated. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.

States are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. These benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the monthly mean equivalised net income, as calculated by Eurostat. The level of benefit should be adjusted as necessary to keep pace with inflation. Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are relevant to the implementation of this provision⁵⁴.

Moreover, Article 16 requires states to assist families with childcare, housing, and appropriate social services.

3.8.4 Concrete assessment of the SISP-countries

As required under the Code, the Revised Code and the European Social Charter the benefits granted to families are very manifold in the assessed countries. They include *periodical payments in cash, tax relief, benefits in kind and social services for families*. In **Croatia** the family benefit is payable as cash benefit and/or tax benefit. A child allowance is paid for all children until the age of 15. Until the age of 19 it is granted if children undergo secondary education. In case of an illness the age limit is 21. If children are seriously disabled the allowance is paid until the age of 27. Taxpayers may claim tax relief or deductions for dependant children, including those over 18, if they attend regular education or study, as well as dependant children with disability for the duration of the disability. In **Macedonia** one of the parents or of the guardians of a child up to the age of 18 is entitled to a child benefit if the child attends school regularly, or the child is completely and permanently unfit for work, or is

⁵³ See, *inter alia*, the resolution of the Committee of Ministers on the application of the European Code of Social Security by Italy (2000).

⁵⁴ Digest of the case law of the ECSR, March 2005, 74.

likely to stay unfit for work for a period longer than one year, or the child cannot study due to illness. In **Serbia** parents are entitled to child allowance if the children are younger than 19 years of age and attend to school within the system of education in the Republic of Serbia. Moreover, a parental supplement can be obtained by the mother and a compensation of kindergarten costs for children without parental care and for handicapped children is granted. In **Croatia, Macedonia and Serbia** only these periodical payments in cash are prescribed in the submitted documents. The restriction to periodical payments in cash fulfils the requirements of the Code and the Revised Code but not of Article 16 of the European Social Charter. According to this Article Parties undertake to promote not only the economic but also the legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

In the Federation of **Bosnia and Herzegovina** the basic principles on family benefits are based on a philosophy of social insurance. Economically active persons and their families are entitled to claim if they fulfil the conditions prescribed by law. In Brcko District and in the Republic of Srpska the beneficiaries are the residents. In the Republic of Srpska there is a universal system financed from contributions, donations and funds. In the Brcko District there is a universal system financed by the Budget of Brcko District. It provides a flat rate benefit to all residents whose children reside in Brcko District, if they fulfil the conditions prescribed by law. Hence follows that in Bosnia and Herzegovina there is an insurance system (Federation of Bosnia and Herzegovina) and a universal scheme (Republic of Srpska and Brcko District). In the Federation of Bosnia and Herzegovina the benefits are granted, if the children are less than 18 years of age. In the case of a regular full-time study the age limit is 25 years. In the Republic of Srpska the regular age limit is 15 years; in case of handicapped children and children in foster care it is 19 years. Some of the cash benefits provided in Bosnia and Herzegovina are family benefits, child raising allowance, child benefit, birth and adoption grants and benefits intended for accommodation in foster family. Family benefits in **Kosovo** are divided into material and non-material. Social and Family Services include the provision of direct social care, counseling, or, in exceptional circumstances, material assistance, for the benefit of people in need. Direct social care means the provision of help with domestic duties, personal care, mobility, communication or supervision. It can be provided in a person's own home, in a specialist day centre or in a residential home. Counseling is a systematic and programmed process of providing information, advice and guidance aimed at helping an individual or a family to improve their social or interpersonal circumstances. Material assistance means the provision of money, temporary shelter, food, medical fees, clothing or any other material necessity for which there is an urgent need and for which there is no other source available. In **Albania** there is no specific family benefit system. Special benefits are granted for orphans during the middle and university education, e.g. study grants and financial treatment and supplements for accommodations if they are not in the residential institutions. Moreover, health service, dental service, drugs for orphans who do not work, are covered by state budget. Dental service for children under 18 years of age is for free. A supplement for dependent children is paid to persons who get invalidity pension, long term benefit because of labour accident/professional diseases, unemployment benefit or a pension. Social assistance is given to parents having more than two children born simultaneously, which belong to families in need. Disability benefit is provided for handicapped children and family allowances for taking care of handicapped children in need of special care. These benefits seem not to be sufficient. The provided periodical payments are not sufficient because social assistance is only given to families with more than two children born simultaneously. Moreover the benefits in kind are too much focused on orphans.

In **Montenegro** the family protection scheme provides the following benefits: financial protection of family; personal disability benefit; cash compensation for help and care of other person; accommodation into social protection institution or within another family; help for professional rehabilitation; health protection; compensation of funeral expenses; cash assistance. Financial protection of family is subject to means and earnings test of all family members. Only children of beneficiaries of financial protection of family, children with difficulties in development and children without parental care are entitled to child allowance. Also in **Croatia** the entitlement is means tested. The benefit varies according to the monthly net income per family member and there are special rules for sole parents, double orphans and handicapped children. Taxpayers also have the possibility of deduction. The amount deductible is indicated as a percentage of the basic personal allowance which is 1.500 HRK per month. In **Macedonia** the child benefit is attained depending on the age of the child and on the financial situation of the family. Children taken to be supported are entitled to child benefit only in case when both of the parents and the children have no property or revenues for support. The material situation of the family is assessed according to the total revenues and income of the family for the period of the previous year and the number of the family members. A special allowance as financial compensation is provided for children with specific needs having impediments of physical or intellectual development or combined impediments in the development up to the age of 26. This allowance is attained disregarding the financial situation of the family, the number of children or the whereabouts of the school the child is attending. Moreover a right to assistance for a newborn child is provided for the first newborn child as a financial compensation.

Neither the Code nor the Revised Code requires a minimum level of benefit for each beneficiary. According the Revised Code the states can choose between three models which fix a minimum amount of expenditure for all entitled persons within the territory of the contracting state (see chapter 3.8.1.2). Under the Code a minimum amount of expenditure for all entitled persons within the territory of the contracting state is fixed, too, but there is only one model (see chapter 3.8.2.2). The amount under the Code and the Revised Code covers benefits in cash and benefits in kind. For the assessment of the minimum amount of expenditure for all entitled persons within the territory of the contracting state, the states have to provide actual figures.

Under the Revised Code a maximum *qualifying period* of six months of residence is admissible only for systems which base entitlement on residence (Article 48). Under the original Code the maximum qualifying period is one month of employment or contributions or six months of residence (Article 43). Moreover, according to Article 2 § 1d of the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors⁵⁵, for entitlement to non-contributory social security benefits, including family allowances, a length of residence period up to 6 months is considered to be in compliance with the general principle of equal treatment. In most of the assessed countries family benefits schemes are social assistance schemes financed from the State Budget. No insurance periods completed by parents are required for the entitlement. But in **Croatia** the child allowance is granted to Croatian citizens residing in Croatia and to foreign citizens permanently settled in Croatia for at least 3 years. There is no doubt that this period of 3 years is too long and violates the above mentioned international documents. Moreover, according to Article 16 of the European Social Charter (see chapter 2.7.3), in Croatia foreigners being nationals of other

⁵⁵ CETS No. 13, signed in Paris 11.12.1953.

Parties of the Charter lawfully resident or working regularly within the territory of Croatia have to be equally treated. This requirement is not fulfilled if foreign citizens have to be permanently settled in Croatia for at least 3 years. Moreover, a qualifying period of 3 years is not in compliance with the Code and the Revised Code.

3.9 Maternity benefit

3.9.1 Revised European Code of Social Security⁵⁶

a. Contingency

Part VIII covers two contingencies (Article 51):

1. **pregnancy**, confinement and their consequences;
2. **suspension of earnings** resulting from pregnancy, confinement and their consequences.

b. Benefits

States must provide the following benefits:

1. Medical care (Article 53):

- a. **pre-natal, confinement and post-natal care** by a medical practitioner, specialist, midwife or a member of a profession allied to the medical profession;
- b. **maintenance in a hospital** or any other medical institution;
- c. **necessary pharmaceuticals**;
- d. **dental care** and prosthesis;
- e. **medical rehabilitation** including provision and maintenance of prosthesis and other medical aids; and
- f. **transport** of the beneficiary.

2. **Periodical benefits in cash** (Article 54).

The minimum amounts for the periodical benefits in cash are to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Co-payments

Article 53 § 2 of the Revised Code allows that national social security systems require the beneficiary or his breadwinner (in systems based on derived rights, see chapter 2.8, *supra*) to share the cost of medical care through **co-payments (“cost-sharing”)**. The Revised Code does not establish a precise ceiling for co-payments, but stipulates that their levels must not “impose hardship” to the persons covered or “render medical and social protection less effective”—allowing the Commission of independent experts to assess the situation on co-payments based on an overall picture and in a less technical manner. For more details on the issue of co-payments see chapter 4.2.2, *infra*.

d. Qualifying period

To avoid abuse, qualifying periods for entitlement to medical care are admissible (Article 55). They can be based on a specified period of employment and/or residence. The Revised Code itself sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods is, *inter alia*, intended to prevent “social tourism”.

e. Period of entitlement

Benefits must be granted throughout the contingency, except for **periodical cash benefits** which may be limited to a maximum duration of **14 weeks** (Article 56).

⁵⁶ See Explanatory Report, §§ 331 et seq.

f. Waiting period

Under the Revised Code, waiting periods are not admissible in the field of maternity benefit.

3.9.2 European Code of Social Security

a. Contingency

Part VIII covers two contingencies (Article 47):

1. **pregnancy**, confinement and their consequences;
2. **suspension of earnings** resulting from pregnancy, confinement and their consequences.

b. Benefits

States must provide the following benefits:

1. Medical care (Article 49):

- a. **pre-natal, confinement and post-natal care** by medical practitioners or qualified midwives; and
- b. **hospitalisation** if necessary, including bed and board; and
- c. under the Protocol: **pharmaceuticals**, for which co-payments of up to 25 % are exceptionally admissible.

2. **Periodical benefits in cash** (Article 50).

There is a significant overlap with Part II in what concerns medical benefits. This overlap should guarantee basic medical protection to women in states having accepted Part II, but not Part VIII (because of the obligation to pay cash benefits under Part VIII).

Besides, states must **encourage** women to avail themselves of the services placed at their disposal (Article 49 § 4).

The minimum amounts for the periodical benefits in cash are to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Co-payments

Medical services required by Part VIII of the Code must not be subject to co-payments, but services not mentioned by the Code may be charged. Therefore, a fixed co-payment for all medical treatment, no matter if it is obtained at home or in hospital and regardless of its relation to illness or to pregnancy, as it was charged in the Netherlands until 1995, violates the Code. There was no violation in so far as care at home was concerned, but hospital treatment would have had to be free of charge. The government's argument that it did not want to discourage women to give birth at home was countered with the invitation by the Committee of Ministers to abolish co-payments for all medical treatments related to maternity, regardless of where it is provided.⁵⁷ Finally, the Netherlands complied and excluded pregnant women from all co-payments for treatments related to confinement.

d. Qualifying period

To avoid abuse, qualifying periods for entitlement to medical care are admissible (Article 51). They can be based on a specified period of employment and/or residence. The Code itself sets no maximum levels for these qualifying periods, but they **must not be longer than necessary to avoid abuse**. The concept of qualifying periods is, *inter alia*, intended to prevent "social tourism".

⁵⁷ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (1988).

e. Period of entitlement

Benefits must be granted throughout the contingency, except for **periodical cash benefits** which may be limited to a maximum duration of **12 weeks** (Article 51).

f. Waiting period

Under the Code, waiting periods are not admissible in the field of maternity benefit.

3.9.3 Concrete assessment of the SISP-countries

In **Kosovo** only few maternity benefits are provided. A maternity leave for (public service jobs) and exemption from health care participation. However, there is a document known as the collective contract, which is signed by the government of Kosovo and the Union of Trade Unions that contains several provisions regarding maternity. Until now, this agreement has not been implemented due to the lack of funds.

According to the Revised Code in case of the contingency “*pregnancy, confinement and their consequences*” the following benefits have to be provided: pre-natal, confinement and post-natal care by a medical practitioner, specialist, midwife or a member of a profession allied to the medical profession; maintenance in a hospital or any other medical institution; necessary pharmaceuticals; dental care and prosthesis; medical rehabilitation including provision and maintenance of prosthesis and other medical aids; transport of the beneficiary. In all of the assessed countries these benefits are provided within the scope of the *medical care* scheme. The problem is that in the submitted documents the informations concerning medical care are based on the common benefits (see chapter 3.3.3) and it is not possible to assess if the special requirements concerning medical care in connection with pregnancy, confinement and their consequences are fulfilled. Nevertheless, it would be easier to fulfil the requirements of the original Code. The Code only requires pre-natal confinement and post-natal care by medical practitioners or qualified midwives and hospitalisation if necessary, including bed and board. Moreover, under the Protocol states must provide pharmaceuticals, for which co-payments of up to 25% are exceptionally admissible.

Apart from medical care *periodical benefits in cash* have to be provided under the Code and the Revised Code. In **Macedonia, Croatia, Serbia, Montenegro** and **Bosnia and Herzegovina** during absence from work due to pregnancy, child birth and maternity wage compensation is granted. In **Albania** in case of maternity the maternity benefits, the maternity allowance, due to employment change and a birth grant are provided. The maternity benefit is paid to the insured woman with regard to pregnancy and childbirth. The maternity allowance benefit is to reimburse loss of wage because of employment change for reasons of pregnancy that forces the woman to accept a lower paid job. Birth grant is a lump-sum given once to mother or father of a new-born child. The mother shall have priority in eligibility, if she is insured.

Article 53 § 2 of the Revised Code allows that national social security systems require the beneficiary or his breadwinner to share the cost of medical care through *co-payments* (“cost-sharing”). The Revised Code does not establish a precise ceiling for co-payments, but stipulates that their levels must not “impose hardship” to the persons covered or “render medical and social protection less effective”. For **Serbia** and **Macedonia** it is stated that for certain medical services, medicines and aids (devices) prescribed co-payment has to be paid, while some categories of person are free from this co-payment. There is no further information if women are exempted from co-payment in case of pregnancy and confinement. In **Kosovo** and **Croatia** no co-payment has to be paid for pregnancy and maternity benefits.

The same rule applies to **Albania** and **Bosnia and Herzegovina**, where benefits in kind are a universal free health's coverage related to pregnancy, child delivery and child nursing.

To avoid abuse, *qualifying periods* for entitlement to medical care are admissible under the Code and the Revised Code. They must not be longer than necessary to avoid abuse. In **Serbia, Montenegro** and **Bosnia and Herzegovina** no qualifying periods for entitlement to maternity benefits are required. Concerning the situation in **Macedonia** concrete informations are lacking. In **Albania** maternity benefit is only granted if the woman has acquired 12 months of insurance in respect of each contingency. In case of another pregnancy during the period of maternity benefit, the condition of 12 months payment of contributions for the entitlement of the other maternity benefit is not required. For the birth grant mother or father must have contributed for one year prior to the childbirth. I doubt if a qualifying period of 12 months insurance is necessary to avoid abuse. In my opinion this period is too long to be in compliance with the Code and the Revised Code.

In **Croatia** for employed mothers no minimum periods of insurance are required. An unemployed mother is only entitled to cash benefits if she has been a citizen of the Republic of Croatia for 3 years and if she was registered as unemployed with the Employment Bureau no less than 12 months prior to delivery. Moreover, pupils and students who are Croatia nationals provided that they attend school regularly are entitled. The **Croatian** provision that unemployed mothers have to fulfil special requirements is in compliance with the Revised Code, because the personal scope of application in the field of maternity benefit (suspension of earning) has not to cover unemployed persons (see chapter 2.9.1). Nevertheless, concerning the entitlement of pupils and students the Croatia regulation is problematic because Croatian nationality is required. Article 12 § 4a of the European Social Charter contains the right to equal treatment. This right requires that states have to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only. Hence follows that the discrimination of foreigners in Croatia is not in compliance with Article 12 of the European Social Charter.

Under the Code and the Revised Code *waiting periods* are not admissible in the field of maternity benefit. Moreover, there are no waiting periods in **Bosnia and Herzegovina, Croatia, Serbia** and **Montenegro**. In the Republic of Srpska up to 4 months the benefit is granted by the employer, beyond that the Public Fund of Child Protection pays up to 12 months. This is another example for the partly transfer of the responsibility for funding and paying sickness benefit to the employers (see chapter 3.4.3). Concerning the situation in **Macedonia** concrete informations are lacking.

Benefits must be granted throughout the contingency, except for periodical cash benefits which may be limited to a maximum duration of 14 weeks under the Revised Code and 12 weeks under the Code. In **Macedonia** the payment of the compensation during pregnancy, child-birth and maternity shall be made for a period of 9 months. In case of giving birth of more than one child, the compensation shall be granted up to one year. In **Croatia** maternity benefit is paid during the obligatory pregnancy and maternity leave until the child is 6 months old. This leave may begin 45, but has to begin 28 days before estimated delivery. An additional maternity leave is granted until the child is 1 year old, respectively 3 years old in case of twins, third and following children. In **Bosnia and Herzegovina** different rules apply. In the Federation of Bosnia and Herzegovina the cash benefits are paid for a minimum of 6 months (there are slight variations between cantons) up to 1 year. In the Republic of Srpska the benefits are paid for 12 months (at least 30 days before birth and 335 days after birth). In

Brcko District the benefit is paid for 3 months. This period of 3 months fulfils the requirements of the original Code but not of the Revised Code.

In **Albania** the period of maternity benefit is 365 calendar days, including a minimum of 35 days prior to and 42 days after childbirth. If during the pregnancy are more than one child, the benefit period is 390 calendar days, including a minimum of 60 days prior to and 42 days after child birth. When a child of up to one year of age is adopted, the adoptive mother, having not less than 12 months insurance, will benefit from the day the adoption occurred, but not prior the 42nd day of childbirth, subject to a maximum of 330 days from baby delivery. The minimum period of benefit for the adoptive mother is 28 days. When a child is adopted during the maternity leave, the real mother will benefit until the day the adoption occurred, but not less than 42 days after childbirth. For **Serbia** and **Montenegro** it is not clear if there are special rules for the maternity cash benefits or if the general rule for wage compensation for temporary incapacity for work applies. The latter would mean that the benefit could be granted for a maximum of 12 months.

3.10 Invalidity benefit

3.10.1 Revised European Code of Social Security⁵⁸

a. Contingency

A special feature of invalidity benefit (and of the Revised Code) is the close link between the method for the definition of the personal scope on one side and the definition of the contingency on the other side. Depending on how personal coverage is organized, the **contingency differs**:

1. Insurance systems: incapacity to **work or earn** (Article 58 a).
2. Universal schemes (Article 58 a, b and c):
 - a. incapacity to **work or earn**;
 - b. incapacity to **engage in his usual activities**;
 - c. incapacity of a **child** resulting from **congenital disability** or from **invalidity occurring before the school-leaving age**.

National legislation may freely decide on the minimum degree of reduced capacity required for payment of a benefit.

b. Benefits

Corresponding to the different contingencies, there are different types of benefit:

1. Benefit for **incapacity to work or earn** (Article 60 § 1): This benefit is to be provided as a **periodical benefit in cash**. The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).
2. Benefit for **incapacity to engage in his usual activities** (Article 60 § 3): This benefit is to be provided as a **periodical benefit in cash**. The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).
3. Benefit for **incapacitated children** (Article 60 § 4): This benefit is to be provided as a **benefit** (allowance) **in cash** (for education or adaptation) or as a **benefit in kind** in the form of specific measures to assist progress at school or at work.

In addition, contracting states must provide increased or special benefit (in cash and/or in kind) for beneficiaries whose condition necessitates the **constant attendance of another person** (Article 60 § 8).

⁵⁸ See Explanatory Report, §§ 374 et seq.

Moreover, states must (Article 62):

- provide functional and occupational rehabilitation facilities for disabled persons,
- take measures to facilitate the placement of disabled persons in suitable employment and
- grant mobility aids and promote the social integration of disabled persons.

c. Qualifying period

Entitlement to invalidity pensions (Article 60 §§ 1 to 3) may be based upon

- **periods of contribution,**
- **periods of occupational activity** or
- **periods of residence.**

The general qualifying period under the Revised Code is **15 years of contributions, occupational activity or residence** (Article 60 § 5.a). Longer qualifying periods of **up to 30 years** may be required in systems which take account of the period between the occurrence of the risk and a specific age (Article 60 § 5.b). For systems based on economic activity, Article 60 § 5.c allows for yet another calculation of the qualifying period.

The Revised Code also takes into consideration persons who do not fulfil the necessary qualifying periods (Article 60 § 6). The uniform qualifying period for partial pensions is **five years of contributions, occupational activity or residence** (Article 61). These reduced benefits may be reduced proportionally to the period of contribution, occupational activity or residence.

Instead of a system of full and reduced pensions, contracting states may introduce a **single pension** with a lower replacement ratio (essentially, **40 %** instead of 50 %) and a uniform qualifying period of **one year** of contribution, employment or residence (Article 60 § 7).

d. Period of entitlement

Benefits must be granted throughout the contingency (i. e. until recovery of capacity for work) or until the beneficiary is entitled to old-age or survivors' benefit (Article 63).

e. Waiting period

Under the Revised Code, waiting periods are not admissible in the field of invalidity benefit.

3.10.2 European Code of Social Security

a. Contingency

The contingency covered is the inability to engage in any gainful activity, the inability being likely to be permanent or to persist after the exhaustion of sickness benefit (Article 54). National legislation may freely decide on the minimum degree of reduced capacity required for payment of a benefit (under the Protocol: minimum degree of reduced capacity no higher than $\frac{2}{3}$). The criterion of incapacity refers to **any** gainful activity, i. e. not just the previous occupation of the injured or diseased person.

b. Benefits

The social security scheme has to provide **periodical benefit in cash** (Article 56). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

Under the Protocol, states are also obliged to provide rehabilitation and re-employment facilities for incapacitated individuals as well as assistance in their transfer to another district when necessary to find suitable employment (Article 56 § 2).

c. Qualifying period

Entitlement to invalidity benefits may be based upon

- **periods of contribution,**

- **periods of employment** or
- **periods of residence.**

Besides, the Code distinguishes between two types of pensions. The maximum qualifying periods differ depending on the basis of entitlement:

1. Full pension:

- a. Systems based on employment: A full pension is to be granted after **15 years of contributions or employment** or after **10 years of residence** (Article 57 § 1.a).
- b. Systems based on economic activity: A full pension is to be granted after **three years of contributions** during working age on a prescribed yearly average level (Article 57 § 1.b).

2. Partial pension:

- a. Systems based on employment: A partial pension is to be granted after **five years of contributions or employment** (Article 57 § 2.a).
- b. Systems based on economic activity: A partial pension is to be granted after **three years of contributions** during working age at least on **half** the prescribed yearly average level required for a full pension (Article 57 § 2.b).

Instead of such a combination of full and partial pensions, contracting states may introduce a **single pension** with a lower replacement ratio (**30 %** instead of 40 %) and a uniform qualifying period of **five years** of contribution, employment or residence (Article 57 § 3).

In a number of states, pension systems differ considerably from the models proposed by the Code. These systems require longer qualifying periods because they add “credited periods” to actual contributory periods. With these “credited periods”, legislation recognises certain reasons for absence from work, e. g. unemployment, child care, military service, further education or even invalidity.

In this connection, the German invalidity pension system raised some difficulties in the mid-1990’s. The German system credited periods of permanent incapability until the age of 60 and required a total of 35 years (of actual contributory and credited periods) for entitlement to invalidity benefit, whereas the Code allows only 15 years of actual contributions. Initially, this system was not challenged by the Committee of independent experts. The situation changed when Germany began to reduce credited periods (and replaced them partially with purchasable extra credited periods), e. g. for education from seven to three years, for vocational training from 90 % over a maximum of four years to 75 % over a maximum of three years.⁵⁹ However, the German government successfully proved that these reductions were counterbalanced by prolonged credited periods for women, e. g. for child care. This is one of the relatively rare examples in which the Committee pragmatically gears to an overall picture instead of “taking the pick of the bunch”.

d. Period of entitlement

Benefits must be granted throughout the contingency (i. e. until recovery of capacity for work) or until the beneficiary is entitled to old-age benefit (Article 58).

e. Waiting period

Under the Code, waiting periods are not admissible in the field of invalidity benefit.

3.10.3 Concrete assessment of the SISP-countries

Except Kosovo all of the assessed countries have insurance systems, whereas **Kosovo** has a universal scheme. Hence follows that according the Revised Code in the countries with an insurance system the *contingency* covered is the incapacity to work or earn (Article 58 a),

⁵⁹ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Germany (1997).

whereas in Kosovo the incapacity to engage in his/her usual activities and the incapacity of a child resulting from congenital disability or from invalidity occurring before the school-leaving age, have to be added. According the submitted documents it has to be supposed that these requirements are not fulfilled in Kosovo.

In **Croatia** disability (occupational/partial or total) is defined as a permanent reduction or loss of the ability to work, caused by a non-work related injury or disease, or by a work related injury or disease. Different benefits are granted for occupational disability and total disability. Occupational disability is a permanent reduction of the capacity to work for more than one half (51%) as compared to a physically and mentally healthy person of the same or similar education and capacity, caused by changes in health that can not be cured. In case of a residual ability to work an occupational rehabilitation with wage compensation or an invalidity pension (partial pension) is granted. The occupational rehabilitation is provided under the age of 50 until the employment in another adequate job, or during an unemployment period of 12 months after the completion of occupational rehabilitation. Salary compensation is assessed in the amount of invalidity pension for occupational disability. After the age of 50 an invalidity pension for occupational disability is granted. It is assessed in a higher amount if the disabled person is unemployed (80% from the full invalidity pension) and in decreased amount if he/she is employed (half of the pension for the unemployed). On the basis of the total and permanent loss of the ability to work because of the incurable changes in health occurring prior to age 65 (men and women) a full invalidity pension is granted. In **Macedonia** pursuant to the Law of pension and disability insurance, disability is a permanent decrease or loss of the working ability incurred by an injury occurred out of work or by disease, or by injury at work or an occupational disease. There are two groups of invalidity: reduced working capacity where the person can still work full or part time either in his/her previous place of work or another and total loss of working capacity. When the claimant remains able to work for at least half of the working day doing the job he/she had prior to the advent of disability or is still able to work full-time in another job with or without retraining or further training, the minimum level of incapacity for work applies. Moreover, in Macedonia invalidity loans for bodily injuries are granted. There is an independent right to a periodic benefit that is determined by the type of the bodily injuries. It is paid monthly and, despite being called a loan, the money does not have to be repaid. In **Albania** cash benefits in case of invalidity are: full invalidity pension, partial invalidity pension, reduced invalidity pension, allowance for helplessness and supplements for dependent children. Full disability pension is granted if a minimum insurance period is acquired and if the person is disabled to any economic activity, or has suffered severe mutilations and physical defaults (including the blind). If a person is in condition of a full disability, but has not completed the minimum insurance period, he/she is eligible for a reduced disability pension equal to the ratio between the insurance period completed and the insurance period defined for a full disability pension. Partial disability pension is provided when a minimum insurance period is acquired and if the person is disabled to perform the last employment, but may work under special working conditions. Insured persons in **Serbia** and in **Montenegro** are entitled to invalidity pension if they have suffered complete loss of work capability (for any work) due to health status changes and cannot be improved by medical treatment or rehabilitation. Apart from the complete invalidity a partial invalidity (loss of 75% of work capability) is accepted in Montenegro. In **Bosnia and Herzegovina** there are two invalidity categories: invalidity category I includes policy holders who experience loss of work capacity; invalidity category II includes policy holders with changed work capacity.

The Revised Code not only insists on the granting of periodical benefit in cash. Additional, states must provide functional and occupational rehabilitation facilities for disabled persons, take measures to facilitate the placement of disabled persons in suitable employment and grant mobility aids and promote the social integration of disabled persons (Article 62). Under the Protocol, states are also obliged to provide rehabilitation and re-employment facilities for incapacitated individuals as well as assistance in their transfer to another district when necessary to find suitable employment (Article 56 § 2). Moreover, the Revised Code states that contracting states must provide increased or special benefit (in cash and/or in kind) for beneficiaries whose condition necessitates the constant attendance of another person (Article 60 § 8).

In **Croatia** medical rehabilitation and vocational retraining is available. Vocational training and salary compensation is paid until the transfer to another adequate job at the same employer, or for up to 12 months after the completion of occupational rehabilitation if no job can be found. In **Macedonia** sheltered enterprises enjoy special treatment in terms of contributions and taxation. They must contain at least 5 people of whom at least 40% should have disabilities. Moreover, employers should adapt the work place to provide proper working conditions for people with disabilities. The expenses for this are covered by the Special Fund within the National Employment Bureau. Persons with disabilities may be excused from paying contributions and they can also apply for a financial help from the Special Fund for starting their own independent business. Persons with disabilities may also receive retraining at the expense of the Special Fund. In **Albania** an allowance for helplessness is provided if the beneficiary of an invalidity pension becomes physically or mentally helpless and needs constant care of another person. Moreover, in Albania professional rehabilitation is available to disabled persons where it may help the recipient to re-enter the labour market. The entitlement criteria and methods of training are closely linked with the recipient's educational and medical needs. The government has also developed specialised services providing advice to disabled persons who are choosing or starting another job. Every employer who engages more than 24 employees is obliged to employ one moderately disabled person for every 25 able bodied people working for him/her. If an employer engages a severely disabled person then this counts as five moderately disabled people. Employers who do not fulfil this quota must pay the equivalent of one minimum wage per absent disabled employee to the National Labour Fund. This money is then used to help generate employment opportunities for the disabled. Moreover, employers are entitled to subsidie from the Employment Office in order to buy special equipment or adapt the work place in order to cater for those with disabilities. Favourable tax treatment is also available for employers of disabled persons. In **Serbia** and in **Montenegro** a cash compensation for help and care of other person is provided. The benefit is granted to a person who is incapable of fulfilling basic life functions (necessities), e.g. he/she cannot dress, feed, walk without help of another person. For **Bosnia and Herzegovina** the following rehabilitation and retraining measures are mentioned in the submitted documents: right to be assigned to another suitable position; employment; new or further training; or to receive an appropriate monetary compensation with regard to the use of these rights.

None of the above mentioned states grants mobility aids and promotes the social integration of disabled persons. Only in **Albania**, **Serbia** and **Montenegro** a special benefit is provided for beneficiaries whose condition necessitates the constant attendance of another person.

Under the Revised Code the general *qualifying period* is 15 years of contributions, occupational activity or residence. Longer qualifying periods of up to 30 years may be required in systems which take account of the period between the occurrence of the risk and a specific age. For systems based on economic activity another calculation of the qualifying

period is allowed. As the following review shows these requirements are fulfilled: In case of non-work related injury or disease a minimum of 1/3 of working life covered with qualifying periods is required in **Croatia**. The working life period is the full number of years between the age of 20 years (23 years for persons with post-secondary qualifications; 26 years for persons with university qualifications) and the day of disability. For persons under the age of 30 or 35 more favourable conditions apply. Insured persons disabled before the age of 30 have to fulfil 1 year of qualifying period. The insured period requirement for the entitlement to invalidity pension for insured persons disabled between the age of 30 and 35 is at least 2 years of coverage and at least 1 year of coverage for those with the university degree of education. In **Macedonia** a similar rules apply. The individual must have acquired a pension insurance period of no less than 1/3 of the period between the age of 20 and the day of disability (working age). Before the age of 20 the qualifying period is 6 months, between the age of 20 and 25 it is 9 months and between the age of 25 and 30 it is 30 months. In **Albania** the minimum insurance period to qualify for a disability pension is half the period that disability age of person exceeds 20 years of age. In **Serbia** a qualifying period of 5 insurance years has to be fulfilled. There is a special provision for persons who became permanently incapable for work before 30 years of age: Up to 20 years of age, one year of insurance period is required, up to 25 years of age, two years of insurance periods are required and up to 30 years of age, three years of insurance periods are required. In **Bosnia and Herzegovina** the minimum period of affiliation for entitlement is 1 year of insurance.

In addition to the general qualifying period the Revised Code and the Code also take into consideration persons who do not fulfil the necessary qualifying periods. The uniform qualifying period for partial pensions is 5 years of contributions, occupational activity or residence. These reduced benefits may be reduced proportionally to the period of contribution, occupational activity or residence. Only in **Albania** a person who has not completed the minimum insurance period, is eligible for a reduced disability pension equal to the ratio between the insurance period completed and the insurance period defined for a full disability pension. In **Serbia** and in **Bosnia and Herzegovina** the general qualifying periods (5 years and 1 year) are short enough to fulfil the required qualifying period for the partial pension, too. For **Croatia** and **Macedonia** it is more difficult to assess if the existing rules on qualifying periods guarantee a uniform qualifying period of 5 years of contributions for partial pensions. Because of special provisions for insured persons disabled before the age of 35 years (Croatia) and 30 years (Macedonia) most of the insured will be able to fulfil the qualifying period of 1/3 of the period between the age of 20 (in Croatia also 23 or 26) and the day of disability. In my opinion that speaks for a compliance with the Revised Code and the Code.

3.11 Survivors' benefit

The Revised Code protects for the first time not only surviving wives, but also surviving husbands, as a manifestation of gender equality (with notable transitional provisions in Article 70). The Revised Code also reflects a development social security systems throughout Europe have shown in recent years, namely a certain reluctance to maintain widows in the long run.

3.11.1 Revised European Code of Social Security⁶⁰

a. Contingency

The contingency covered is the **loss of support** suffered by a surviving spouse or by a child as the result of the death of the breadwinner (Article 64).

The term “**surviving spouse**” implies that the spouse was dependent on the victim when the contingency arose. National legislation may define when surviving spouses are to be regarded as incapable of meeting their own needs (e. g. because of age, invalidity, dependent children). The term “**child**” is defined in Article 1: “a child not having reached school-leaving age, or under 16 years of age” and “under prescribed conditions, a child over the age specified [...] who is an apprentice or a student or suffers from chronic illness or infirmity making him unfit to engage in any occupational activity”.

b. Benefits

The social security scheme has to provide **periodical benefit in cash** (Article 66). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Qualifying period

Entitlement to survivors’ benefit (Article 66 § 1) may be based upon

- **periods of contribution,**
- **periods of occupational activity** or
- **periods of residence.**

The general qualifying period under the Revised Code is **15 years of contributions, occupational activity or residence** (Article 66 § 5.a). Longer qualifying periods of **up to 30 years** may be required in systems which take account of the period between the occurrence of the risk and a specific age (Article 66 § 5.b). For systems based on economic activity, Article 66 § 5.c allows for yet another calculation of the qualifying period.

The Revised Code also takes into consideration persons who do not fulfil the necessary qualifying periods (Article 66 § 6). The uniform qualifying period for partial pensions is **five years of contributions, occupational activity or residence** (Article 67). These reduced benefits may be reduced proportionally to the period of contribution, occupational activity or residence.

Instead of a system of full and reduced pensions, contracting states may introduce a **single pension** with a lower replacement ratio (essentially, **40 %** instead of 50 %) and a uniform qualifying period of **one year** of contribution, employment or residence (Article 66 § 7).

Contracting states may require a **minimum age** for surviving spouses (not higher than the standard retirement age; Article 64 § 2). However, **no age requirement** may be imposed if the spouse is

- **unfit for work** or
- caring for a dependent child.

Contracting states may also require minimum periods of marriage for **spouses who have no children** from their deceased spouse (Article 64 § 4).

For surviving spouses who do not receive survivors’ benefit because they are too young, fit for work and have no children, contracting states must grant special “**resettlement allowances**” in cash, except that they already grant special unemployment benefit to widows and widowers under Part IV (Article 66 § 3).

⁶⁰ See Explanatory Report, §§ 412 et seq.

d. Period of entitlement

Benefits must be granted throughout the contingency, i. e. for spouses until death or remarriage and for orphans as long as they are children, or until the beneficiary is entitled to old-age or invalidity benefit (Article 68). A surviving spouse who “cohabits with another person” may face suspension of the survivors’ benefit (Article 74 § 1.j).

e. Waiting period

Under the Code, waiting periods are not admissible in the field of survivors’ benefit.

3.11.2 European Code of Social Security

a. Contingency

The contingency covered is the **loss of support** suffered by a widow incapable of self-support or by a child as the result of the death of the breadwinner (Article 60).

A “**child**” is defined as a person under school-leaving age or under 15 years of age, by choice of the contracting state (Article 1). (Under the Protocol: under school-leaving age, under 15 years, apprentices under 18 years and permanently incapable persons under 18 years as the first option, or persons under 16 years as the second option for contracting states.)

b. Benefits

The social security scheme has to provide **periodical benefit in cash** (Article 62). The minimum amount is to be calculated according to the rules set out in Part XI (see chapter 3.12, *infra*).

c. Qualifying period

Entitlement to survivors’ benefits may be based upon

- **periods of contribution,**
- **periods of employment** or
- **periods of residence.**

Similar to old-age benefit, the Code distinguishes between two types of survivors’ pensions. The maximum qualifying periods differ depending on the basis of entitlement:

1. Full pension:

- a. Systems based on employment: A full pension is to be granted after **15 years of contributions or employment** or after **10 years of residence** by the deceased (Article 63 § 1.a).
- b. Systems based on economic activity: A full pension is to be granted after **three years of contributions** by the deceased during working age on a prescribed yearly average level (Article 63 § 1.b).

2. Partial pension:

- a. Systems based on employment: A partial pension is to be granted after **five years of contributions or employment** (Article 63 § 2.a).
- b. Systems based on economic activity: A partial pension is to be granted after **three years of contributions** during working age at least on **half** the prescribed yearly average level required for a full pension (Article 63 § 2.b).

Partial pensions may be reduced proportionally to the period of contribution or employment (Article 63 § 4).

Instead of such a combination of full and partial pensions, contracting states may introduce a **single pension** with a lower replacement ratio (**30 %** instead of 40 %) and a uniform qualifying period of **five years** of contribution, employment or residence (Article 63 § 3).

Contracting states may require minimum periods of marriage for **widows who have no children** from their deceased husband (Article 63 § 5). They may also refuse survivors' benefit to a widow who is **not incapable of self-support** (Article 60 § 1).

The Committee of independent experts applies a wide definition of incapability of self-support. For instance, legislation in the Netherlands awards widow's pensions only if the woman is invalid, raising a child of the deceased or if she was born before 1950. According to its definition, the last category (entitlement based purely on age) will phase out during the next few years. The Committee was concerned that all women who are not invalid and not caring for a child would therefore be excluded from survivors' benefit. However, the Committee was ready to take into consideration other efforts by the government to reintegrate widows into the labour market as well, including retraining grants paid to them.

d. Period of entitlement

Benefits must be granted throughout the contingency, i. e. for wives until death or remarriage and for orphans as long as they are children (Article 64). Widows who "live with a man as his wife" may face suspension of the survivors' benefit (Article 68 j).

e. Waiting period

Under the Code, waiting periods are not admissible in the field of survivors' benefit.

3.11.3 Concrete assessment of the SISP-countries

In **Croatia** survivors' pension is granted to eligible survivors after the death of the insured or after the death of a pension beneficiary. The eligible survivors are the following family members: spouse aged 50 or caring for children entitled to survivors' pension, or disabled; widow or widower aged at least 45 at the time of contingency acquires the entitlement upon reaching 50 years of age. The divorced spouse is also eligible under the same conditions as the spouse, if he/she is entitled to alimony. Children are eligible for survivors' pension until the age of 15 without any further conditions, but after that age they are entitled until 18 if they are unemployed and entitled until the age of 26 if they are in regular education. Disabled children are entitled while the disability exists, even for lifetime. Similar rules apply in **Albania, Macedonia, Bosnia and Herzegovina, Serbia and Montenegro**. In **Kosovo** the only scheme that provides for survivors' pension for the family in cases of death of the beneficiary/pensioner is the pension saving scheme. The Basic Pension and Invalidity Pension are not inherited by family members. Instead, they are terminated with the death of the pensioner. The only ones that receive funding for funeral expenses and related issues are the families of victims who died or went missing during the war in Kosovo. This compensation has been awarded on the basis of a government decision and an administrative bylaw and it is administered by the Government Commission for Missing Persons. Except **Kosovo** the assessed SISP-countries provide benefits in cash, which fulfil the requirements of the Code and the Revised Code.

In **Croatia** it is required that the deceased person has completed at least 5 years of insurance or 10 years of qualifying period, or has met the disability pension requirements in respect of the length of qualifying periods completed. Insurance years reflect the period during which the insured person actually paid contributions whereas qualifying periods also include non-contributory periods credited or taken into account. If the death is a consequence of work injury or occupational disease no minimum qualifying period is required. In **Macedonia** the family members of the deceased are entitled to a family pension if the deceased was insured for at least 5 years or had at least 10 years of pension service, or had met the requirements for old-age or disability pension, or had been the recipient of old-age or disability pension. If the death of the insured was caused by a job-related injury or vocational illness, the members of

the family are entitled to a family pension regardless of the length of pension service of the insured. In **Bosnia and Herzegovina** the family members are entitled to survivors' pension if the insured person fulfilled the conditions for old-age or invalidity pension on the day of his/her death or if the deceased was a beneficiary of his/her own pension on the day he/she died. If the death is a consequence of employment injury or occupational disease none of these conditions has to be fulfilled. In **Serbia and Montenegro** survivors' pension is granted if the deceased has completed at least 5 years of insurance periods, or if he/she was already a pensioner receiving old-age or invalidity pension. No insurance periods are needed if the death occurred as the consequence of work injury or professional disease.

Hence follows that in **Croatia, Macedonia, Serbia and Montenegro** one of the qualifying period models is the performance of 5 years of insurance. This qualifying period is in conformity with the Code and the Revised Code. **Bosnia and Herzegovina** is in compliance with the Code and the Revised Code, too. The family members are entitled to survivors' pension if the insured person fulfilled the conditions for old-age or invalidity pension, and the qualifying period for an invalidity pension only is 1 year of insurance.

In **Croatia** in case of a remarriage a widow/widower aged less than 50 years will no longer be entitled to survivors' pension, unless he/she is totally incapable of work. Children are eligible for survivors' pension as long as they are children (until the age of 26 at the latest). Disabled children are entitled while the disability exists, even for lifetime. In **Macedonia** concerning the entitlement of children similar rules apply. In case of remarriage of the widow/widower the family pension is not affected, whereas in **Albania** the widow/widower loses the right to a survivors' pension. In **Bosnia and Herzegovina** in the case of remarriage the widow aged less than 45 years and the widower aged less than 55 years (60 years in the Federation of Bosnia and Herzegovina) will no longer be entitled to survivors' pension, unless he/she is totally incapable of work. Children are entitled to survivors' pension if they are less than 15 years old (full-time students: 25 years). For disabled children there is no age limitation. In **Serbia** children are entitled to survivors' pension till to the age of 15 and after that age till to the end of education (age of 20 if in high school; 23 if in advanced school; 26 if on university). Children that are permanently incapable of work are entitled to survivors' pension if such a incapability occurred before the age of 15, 20, 23 or 26, or if such an incapability occurred after that age but before the death of a parent providing that he/she maintained them. Under the Code and the Revised Code benefits must be granted throughout the contingency, i.e. for spouses until death or remarriage and for orphans as long as they are children, or until the beneficiary is entitled to old-age or invalidity benefit. The described provisions fulfil this requirement.

3.12 Calculation of benefits

The provisions on the calculation of almost all benefits are united in Part XI of the (Revised) Code. As the principles reflected in the original Code and the Revised Code are very similar, the description of Part XI shall be based on the original Code, with an account of the major innovations of the Revised Code at the very end.

3.12.1 European Code of Social Security (and Revised European Code of Social Security)

Some benefits are designed as **income replacement**, others as **cost compensation benefits**. The calculation of benefits is based on three types of benefits:

- **earnings-related** benefits (Article 65 of the Code, Article 71 of the Revised Code),
- **flat-rate** benefits (Article 66 of the Code, Article 72 of the Revised Code) and

– **means-tested** benefits (Article 67 of the Code, Article 73 of the Revised Code).

These three models shall reflect the diversity of social security schemes in Europe while ensuring equivalent minimum standards in all contracting states. States can freely choose between these models, and the (Revised) Code stipulates fixed **replacement rates** for these types.

To assess national systems, the (Revised) Code proceeds from the concept of a “**standard beneficiary**” for each of the contingencies, so as to reflect the typical recipient of each benefit, e. g. a pregnant woman for maternity benefit, a man and his wife for old-age benefit, a widow and two orphans for survivors’ benefit. Those who are not the standard beneficiaries must be granted benefits in a “reasonable relation” to the benefits granted to standard beneficiaries (Article 65 § 5, Article 66 § 3 of the Code). Due to the considerable change of social structures since the 1960’s, the provisions on the standard beneficiary have received substantial amendments in the Revised Code (see chapter 3.12.2, *infra*).

Minimum amounts are expressed as a different percentage for each contingency. Besides, an evaluation basis is established for each of the benefit models, e. g. the previous earnings of the beneficiary. The actual minimum amounts are then calculated by multiplying the evaluation basis with the fixed percentage.

a. Earnings-related benefits

These benefits reflect the income from economic activity before the beneficiary fell victim to the contingency.

The evaluation basis for these benefits is made of the **previous earnings** of the recipient (or of the deceased breadwinner). Typically, national legislation uses the **average** of earnings in a prescribed period before the contingency as calculation basis.

The earnings may, however, be subject to a **ceiling** in order to avoid very high rates of benefits, provided that these ceilings are not lower than the normal wage of a “skilled manual male employee” (Article 65 § 3 of the Code, Article 71 § 3 of the Revised Code).

This model employee can be defined in any of the following three ways, by choice of the contracting state (Article 65 § 3 of the Code, Article 71 § 7 of the Revised Code):

- a. a **fitter or turner** in the manufacture of non-electrical machinery; or
- b. a **skilled labourer in the most important major group** within the most important division of industrial occupations in the contracting state, according to the standardised industrial classification of all economic activities established by the United Nations Economic and Social Council (ECOSOC); or
- c. a person with earnings equal to **125 % of the average wage** of all protected persons in the contracting state.

These ceilings may also be calculated on a **regional** rather than a national base (Article 65 § 8 of the Code, Article 71 § 9 of the Revised Code). If a uniform ceiling for the national territory is applied and normal wages vary regionally, then the median (not the average) wage of all regions is to be applied (Article 65 § 9 of the Code, Article 71 § 10 of the Revised Code).

States must **review and adjust** the rates of old-age, invalidity and survivors’ benefit following substantial changes in the general level of earnings if they result from substantial changes in the cost of living (Article 65 § 10 of the Code, Article 71 § 12 of the Revised Code).

There is no definition of the “cost of living”, but a report of the Committee of Experts on Standard-Setting Instruments (CS-CO) on Turkey makes clear that references to the consumer price index alone are not sufficient, as the cost of living is also reflected by developments in the level of earnings.⁶¹

⁶¹ See the report of the Committee of Experts on Standard-Setting Instruments (CS-CO) on Turkey (2001).

b. Flat-rate benefits

Generally, these benefits are the same for all beneficiaries. Nevertheless, benefits based on the period over which someone has paid social security contributions fit in this category as well, as “variable flat-rate benefits based on periods of insurance”.⁶²

The evaluations basis for these benefits is the **wage of an ordinary adult male labourer**.

This model labourer can be defined in one of two ways, by choice of the contracting state (Article 66 § 4 of the Code, Article 72 § 5 of the Revised Code):

- a. an **unskilled labourer** in the manufacture of non-electrical machinery; or
- b. an **unskilled labourer in the most important major group** within the most important division of industrial occupations in the contracting state, according to the standardised industrial classification of all economic activities established by the United Nations Economic and Social Council (ECOSOC).

It might be noteworthy that Article 66 of the Code focuses on **unskilled labour**, unlike the ceilings in Article 65 of the Code, which are based on **skilled labour**. (The Revised Code does not expressly mention the word “unskilled”, but it does not suggest a different meaning than the one in the original Code.)

These levels may also be calculated on a **regional** rather than a national base (Article 66 § 6 of the Code, Article 72 § 7 of the Revised Code). If a uniform level for the national territory is applied and normal wages vary regionally, then the median (not the average) wage of all regions is to be applied (Article 66 § 7 of the Code, Article 72 § 8 of the Revised Code).

States must **review and adjust** the rates of old-age, invalidity and survivors’ benefit following substantial changes in the general level of earnings if they result from substantial changes in the cost of living (Article 66 § 8 of the Code, Article 71 § 10 of the Revised Code).

There is no definition of the “cost of living”, but a report of the Committee of Experts on Standard-Setting Instruments (CS-CO) on Turkey makes clear that references to the consumer price index alone are not sufficient, as the cost of living is also reflected by developments in the level of earnings.⁶³

c. Means-tested benefits

These benefits are only paid to those who have income and/or assets below a prescribed level. This model is not available for all contingencies of the Code, namely not for employment injury benefit (see chapter 2.6, *supra*) and maternity benefit (see chapters 2.8 and 2.9, *supra*); under the Revised Code, its scope is further reduced.

There are two means-testing methods:

- **income testing** takes into account any income, e. g. from work, self-employment, property or investments;
- **asset testing** takes into account the value of assets, e. g. houses, land property, savings.

These two methods can, of course, also be combined.

The means test has to be based on a fixed scale **fixed by law** and/or regulation, so as to guarantee an **objective right** to the benefit if the means test is fulfilled. Entitlement to the benefit must not be subject to discretion of the social security administration.

The total income received by the standard beneficiary must be sufficient to **maintain the family** of the beneficiary “**in health and decency**”. (This wording does not appear as such in the Revised Code.) In any case, the total income of the standard beneficiary must not be lower than a corresponding flat-rate benefit calculated in accordance with Article 66 of the Code and Article 72 of the Revised Code, respectively.

⁶² NICKLESS, *op. cit.*, p. 63.

⁶³ See the report of the Committee of Experts on Standard-Setting Instruments (CS-CO) on Turkey (2001).

When based on income testing, means-tested benefits can also be designed as “**differential benefits**” which vary with the income received by the beneficiary.

d. Minimum percentages

As described above, the actual minimum amounts for each benefit are calculated by multiplying the evaluation basis with the fixed percentage.

Strictly speaking, the calculation is effectuated as follows:

1. The amount of benefit provided for the standard beneficiary and the amount of family benefit provided are summed up.
2. The evaluation basis according to the selected model (earnings-related, flat rate, means test) and any family benefit to which the standard beneficiary is entitled are summed up.
3. These two values are then compared and must be at least of the percentage specified in the schedule to Part XI.

Technically, the formula to calculate the actual percentage looks as follows:

$$\text{replacement rate (percentage)} = \frac{\text{benefit} + \text{family benefits}}{\text{evaluation base} + \text{family benefits}} \times 100 (\%)$$

The calculated actual percentage must comply with the table contained in the schedule to Part XI:

Part	Contingency	Standard beneficiary	Minimum level
III	sickness	man with wife and two children	45 %
IV	unemployment	man with wife and two children	45 %
V	old age	man with wife	40 %
VI	employment injury (temporary incapacity)	man with wife and two children	50 %
	employment injury (permanent total incapacity)	man with wife and two children	50 %
	employment injury (death)	widow with two children	40 %
VIII	maternity	woman	45 %
IX	invalidity	man with wife and two children	40 %
X	survivors	widow with two children	40 %

Under the Protocol, minimum levels are higher, and the schedule is further refined:

Part	Contingency	Standard beneficiary	Minimum level
III	sickness	man with wife and two children	50 %
IV	unemployment	man with wife and two children	50 %
V	old age	man with wife	45 %
VI	employment injury (temporary incapacity)	man with wife and two children	50 %
	employment injury (permanent total incapacity in general)	man with wife and two children	50 %
	employment injury (permanent total incapacity in need of permanent care)	man with wife and two children	66 ² / ₃ %
	employment injury (death)	widow with two children	45 %
VIII	maternity	woman	50 %
IX	invalidity	man with wife and two children	50 %
X	survivors	widow with two children	45 %

3.12.2 Revised European Code of Social Security⁶⁴

One of the main objectives of the Revised Code was to promote **gender equality**. Accordingly, the various definitions are formulated in a gender-neutral way (e. g. “typical skilled manual worker” instead of “skilled manual male employee”). Likewise, the definitions of the standard beneficiaries are now gender-neutral (e. g. “person with spouse and two children” instead of “man with wife and two children”). Therefore, either the husband or the wife may be the breadwinner.

The most substantial change was the introduction of an additional standard beneficiary—a “beneficiary considered alone”. The emergence of this new category better reflects the reality of modern households. Contracting states are now free to choose between two benchmarks used to assess the level of their benefits:

1. they may apply the minimum percentages for a “**beneficiary considered alone**”, i. e. a single person; or
2. they can stick to the conventional system with minimum levels specified for a “**beneficiary with dependants**”, i. e. a family.

Of course, minimum percentages for single persons are lower than those for families. On the whole however, minimum percentages have increased in comparison with the original Code. Notwithstanding these developments, there is still **no recognition of unmarried couples** who share life expenses (and risks) very much like spouses, and the concept of two breadwinners within a family is not contained in the Revised Code.

The new schedule looks as follows:

Part	Contingency	Single persons	Families		
III	sickness	50 %	person with spouse and two children	65 %	
IV	unemployment	50 %	person with spouse and two children	65 %	
V	old age	50 %	person with spouse	65 %	
VI	employment injury, occupational disease	temporary incapacity	50 %	person with spouse and two children	65 %
		permanent incapacity no need of constant attendance	50 %	person with spouse and two children	65 %
		permanent incapacity need of constant attendance	70 %	person with spouse and two children	80 %
		death (surviving spouse)	50 %	surviving spouse with two children	65 %
		death (surviving child)	20 %		65 %
VIII	maternity	50 %	woman with spouse and two children	65 %	

⁶⁴ See Explanatory Report, §§ 455 et seq.

Part	Contingency	Single persons	Families	
IX	invalidity	50 %	person with spouse and two children	65 %
X	surviving spouse	50 %	surviving spouse with two children	65 %
	surviving child	20 %		

3.12.3 Concrete assessment of the SISP-countries

On the basis of the present documents it is not possible to assess if the amount of the several benefits is in compliance with the Code and the Revised Code. Therefore the following statement is confined to some general remarks.

Concerning *sickness benefits* it can be stated that all of the assessed countries, except Kosovo where an information is lacking, the benefits are earnings-related and seem to be granted in a sufficient amount. The same applies to *work accident and occupational disease benefit* and *maternity benefit*.

In most of the assessed countries *unemployment benefits* are earnings-related (Albania: flat-rate benefit), but the amount seems not be satisfactory in all countries (e.g. in Bosnia and Herzegovina).

Likewise the *old-age pension*, the *invalidity pension* and the *survivors' benefits* are earnings-related in most of the assessed countries.

4 Financing

4.1 General requirements

Article 70 of the Code and Article 76 of the Revised Code govern the financing of social security systems.

The general requirements can be summarized as follows:

- Social security (including its administration) must be **collectively financed**, i. e. through a system based on the **solidarity** of all persons protected. It may be financed through taxation, social security contributions or a combination of both.
- The financing **must not cause hardship** to persons with small means. This certainly implies that flat-rate contributions are only admissible if they are low enough to be borne even by people with small means or if they are cushioned by special grants, rebates etc. Together with the solidarity principle, this usually leads to a certain redistribution of income.
- The financing must take account of the **capacity of persons protected to contribute**. In the original Code, this is further specified by a **maximum percentage of 50 %** to be borne by the employees protected (with certain exceptions in what concerns family and employment injury benefit). This rather strict co-financing clause for contributions which implied *de facto* a bipartite financing was dropped in the Revised Code. This amendment allows states to transfer at least in part the burden of financing to the employees so as to reduce the costs of labour for employers. However, the general rule that employees and employers must not be forced to bear an unfair proportion still applies.
- The financing must also take account of the **economic situation** of the contracting state. If necessary, adjustments in the financing are not only justified, they may even be imperative for the sake of **sustainability** and to ensure smooth operation of social security systems in the future. The original Code expressly provides that the financial equilibrium be reviewed systematically and periodically, particularly in the course of any change in benefits and contribution or tax rates.
- The **state** as such is always **responsible** for the payment of benefits, even if social security is “contracted out” to a private body.

4.2 Specific financing issues

4.2.1 Old-age benefit

Pension systems are facing particular challenges today due to the demographic situation. Many problems are caused by the pay-as-you-go principle which is still predominant in many pension schemes. To reduce the pressure on the shrinking economically active population, the Revised Code provides for example for a **deferred pension** for those who want to continue to work beyond the ordinary retirement age (although for most employees their standing on the labour market deteriorates considerably already well before they attain the retirement age). Another way to facilitate the financing of the social insurance system is the introduction of **part-time pensions**, as payment of benefits is (partly) deferred and contribution periods are prolonged.

When the Code was drafted in the 1950’s and 1960’s, pay-as-you-go systems were conceived to be the sole practicable scheme for a public pension scheme. In recent years, a number of states have introduced elements of **funded systems** (“second tier”) as an alternative to unmixed pay-as-you-go systems. Funded systems are based on individual “accounts” for each

person protected. It is not yet clear if funded financing is in compliance with the Code. There are suggestions for an analogy based on Article 6 of the Code. This provision allows that voluntary insurance systems (e. g. the “third tier” in pension systems) are taken into consideration for an assessment of compliance with the Code.

4.2.2 Co-payments

Co-payments prove to be double-edged:

- On the one hand, they facilitate the financing of health care and encourage patients’ responsibility.
- On the other hand, they may discourage people from attending a doctor at early stages of serious illnesses, exclude underprivileged social groups from health care and discriminate those who suffer from chronic illnesses.

The Code demands generally that co-payments be set at a level which avoids hardship to the persons protected. The Protocol numerically fixes maximum levels for co-payments (see chapter 3.2, *supra*).

Even under the Protocol, the Committee of independent experts takes a look more and more at the global picture. For example, it accepts different co-payments for different groups of persons and appreciates efforts for the protection of vulnerable groups, e. g. by reduced co-payments, complete exemption from co-payments or fixed ceilings for co-payments. If such measures are taken, the Committee of independent experts primarily focuses on the average co-payment rather than the co-payment ratio of each and every person protected.⁶⁵

The Committee of independent experts even accepts slightly higher co-payments if the range of goods and services is greater than required by the Protocol. For instance, the co-payment ratio for pharmaceuticals in Belgium rose to 25.21 % in 1986, but the Belgian health care system covered many non-essential pharmaceuticals so as to compensate the slightly excessive co-payments.⁶⁶

For specific provisions on co-payments and relevant case law, see also chapters 3.2 and 3.9, *supra*.

4.2.3 “Privatisation” of social security

Although in principle states are free in the decision of how to organise social security administration (see chapter 0, *supra*), the Code proves to be rather hostile towards “privatisation” of social security.

In 1996, the legislator in the Netherlands transferred most of the responsibility for funding and paying sickness benefit to the employers. The new sickness benefits scheme required employers to pay sickness benefit for up to 52 weeks. The state took on the role as a last “safety net” for those who cannot receive payments from an employer, e. g. because of insolvency or because an employment contract limited in time has expired.

On the outcome, the new legislation only changed the source of financing. Nevertheless, the Committee of Ministers found the new situation to be a violation of the Code.⁶⁷ The Dutch government insisted that there could be no violation of the part on sickness benefit because it could only be applied in the case of suspension of earnings—as the employer continues to pay wages, there could be no suspension of earnings and no relevant contingency could occur. In

⁶⁵ See, *inter alia*, the resolution of the Committee of Ministers on the application of the European Code of Social Security by Belgium (1986).

⁶⁶ See, the resolution of the Committee of Ministers on the application of the European Code of Social Security by Belgium (1988).

⁶⁷ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (1998).

cases where a suspension arises, the sickness benefit according to the old system would give protection as usual.

The Committee of independent experts came back to the system of collective financing, particularly the principle of solidarity. It held that under the new system, employers would no longer benefit from the risk-sharing which is typical of a collectively financed system of social security. According to the Committee, the new system would also be at a disadvantage for employees, as employers would be more averse to employ persons with poor health or disabilities. To obviate such discrimination, the Dutch legislator, *inter alia*, abolished pre-employment medical examinations.

Nevertheless, the government was not able to convince the Committee of Ministers that the measures taken would surmount the issue of risk-selective employers.⁶⁸ The Committee of Ministers decided that the reforms considerably reduced the coverage of the risk of sickness and placed too much burden on the employers.

To sum it up it can be said that sickness benefit may be paid by employers for the initial period, but not to an extent as in the Netherlands (52 weeks). An initial payment of sickness benefit by employers can only be justified by the prevention of abusive absenteeism.

4.2.4 Financing problems as a justification?

In what concerns the duration of payments, the Committee of independent experts has established a very strict interpretation, insisting on full payment throughout the contingency.

For instance, Greece replaced partial employment injury pensions for persons who suffered a working capacity reduction of less than 50 % with a sickness benefit for up to 720 days. The Committee of independent experts considered this to be a violation of the Code which required payment of a reduced pension for the full duration of the contingency. The government of Greece replied that partial pensions could no longer be afforded by the Greek social security system. The Committee of Ministers decided that financial arguments could not justify turning a long-term pension to a short-term benefit, as financial problems could generally not excuse non-compliance with the Code.⁶⁹

4.2.5 Concrete assessment of the SISP-countries

In most of the assessed countries the social security system is *collectively financed* through contributions and taxations. Moreover, most of the contributions are paid by the employer and the employee as a certain percentage of the income and in some countries, like **Albania** and **Croatia**, there is a minimum and maximum monthly wage for the calculation of contributions. Hence follows, that as a rule, it is guaranteed that the financing does *not cause hardship* to persons with small means. Nevertheless, the general requirement that the financing must also take account of the *capacity of persons protected to contribute* is problematic in some countries. This applies to **Bosnia and Herzegovina**, where it seems that the contributions of the employees are much higher than the contributions of the employer; the state, entity, district and cantonal budgets only cover the deficits. Concerning **Macedonia** it was noticed that only the employer is mentioned as contributory. If this is the case the general rule that employees and employers must not be forced to bear an unfair proportion is violated.

Only in **Kosovo** all the schemes are financed by the consolidated budget of Kosovo with the exception of the second and third pillar of the old-age pension scheme. This means that only

⁶⁸ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (2000).

⁶⁹ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Greece (1997).

the savings pension scheme and the supplementary pension scheme are covered by equal contributions of employers and employees. Hence follows that in Kosovo the social security is not collectively financed, as it is required under the Code and the Revised Code.

Concerning the *pension systems* it has to be pointed out that most of the assessed countries still have a *pay-as-you-go system*. In **Croatia** the second pillar is a *funded system*. The funded systems are based on individual “accounts” for each person protected. It is not yet clear if funded financing is in compliance with the Code. There are suggestions for an analogy based on Article 6 of the Code. This provision allows that voluntary insurance systems (e.g. the third pillar in pension systems) are taken into consideration for an assessment of compliance with the Code. In **Kosovo** the previous pay-as-you-go scheme was replaced by a three pillar pension scheme. Hence follows that the admissibility of this system is more uncertain than in the case of Croatia.

In this respect a broad interpretation of the Code is to prefer. It has to be taken into consideration that the European Union encourages the Member States to find an appropriate balance between funded and pay-as-you-go systems⁷⁰ (see chapter 3.6.3). One of the objectives of the Commission to ensure the long term sustainability of the pension systems of the European Union is the maintainance of the adequacy of pensions and the ensuring of consistency of pension schemes within the overall pension system. The three pillars of pension systems, operating in combinations decided by the Member States, should enable people to remain financially autonomous in old age⁷¹.

Hence follows that the SISP-countries have to undertake reforms which concern the three pillars of the pension systems, namely basic public schemes, occupational schemes and individual pension plans.

⁷⁰ See Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. A concerted strategy for modernising social protection [COM (1999)347].

⁷¹ See Communication from the Commission to the Council, to the European Parliament and to the Economic and Social Committee. The Future Evolution of Social Protection from a Long-Term Point of View: Safe and Sustainable Pensions [COM (2000) 622].

5 Conclusion

5.1 Administrative organization

In most of the assessed countries the administration of social security schemes is entrusted to non-government institutions. The governing bodies of these institutions are organized according to the bipartite or tripartite principle (employers, employees, beneficiaries and government representatives). Hence follows that the administrative organization of these countries is in compliance with the Code and the Revised Code because some involvement of the persons protected is guaranteed.

5.2 Personal scope of application

The findings in the fields of **medical care** and **maternity benefit (pregnancy, confinement etc.)** turned out well. In the assessed countries the personal scope of application in this field is very broad. It covers all economically active persons and their dependants. However, in some countries the concrete data in “Annex 6 – Statistical data” indicate that the coverage is in conformity with the European Code of Social Security and the Protocol to this Code but it does not fulfil the requirements of the Revised Code that stipulates full coverage (e.g. Croatia); in Bosnia and Herzegovina according to “Annex 6 – Statistical data” the personal scope of application neither fulfils the prerequisites of the Code and the Protocol nor of the Revised Code.

Concerning the fields of **old-age pension, invalidity pension, survivors’ benefit and work accident and occupational disease benefit** I come to a similar result: The field of application is very broad and very often the statistical data indicates that the coverage is in compliance with the European Code of Social Security but not with the Revised Code.

The personal scope of application in the fields of **sickness benefit** and **maternity benefit (suspension of earnings)** is not always restricted to employees, as in Albania and Bosnia and Herzegovina. In Croatia, Macedonia, Montenegro and Serbia other economically active persons are covered, too. However, in most cases the concrete assessment of the conformity with the European Code of Social Security, the Protocol and the Revised Code on the basis of the data in “Annex 6 – Statistical data” fails by the insufficient data.

Concerning the personal scope of application in the field of **unemployment benefit** the states have to fulfil two prerequisites: a minimum personal coverage and an obligatory coverage for certain classes of persons that have never been employed or have not been employed for a long time. In most of the assessed countries (Croatia, Albania, Macedonia and Bosnia and Herzegovina) all employees are compulsory insured for the risk of unemployment benefit. In Serbia and in Montenegro unemployment insurance is compulsory for employees and self-employed but not for farmers. Moreover, in Serbia and in the Republic of Srpska a voluntary insurance is provided. The minimum personal coverage seems to be fulfilled in all of the mentioned countries, but once again, a concrete assessment on the basis of data is not possible.

The real problem is, that in most of the assessed countries unemployment benefits are only granted to people who have previously worked. Persons who have never been formally employed but wish to enter the labour market for the first time are not covered. They are excluded a priori from unemployment insurance. Whereas the European Code of Social

Security allows that the payment of total unemployment benefits can be restricted to people who were employed or economically active in the past, the Revised Code is more strict. The exclusion of the labour markets new entrants is contradictory to Article 20 § 3 of the Revised Code. According this Article special categories of persons, e.g. young persons having completed their studies or vocational training, parents at the end of a period devoted to bringing up a child after the end of maternity leave or disabled persons who have completed their occupational rehabilitation, should be protected even if they never where employed or never were employed for a long time. Although in Albania and Croatia in special cases unemployment benefit (Croatia: unemployment assistance) is granted to persons who have never worked or have not worked lately, this regulations are not enough.

Moreover, another problem arises in Macedonia. In this country the possibility to be voluntary insured for the social risk of unemployment is limited to Macedonian citizens and their spouses. This limitation violates the right to equal treatment, stated in Article 12 § 4a of the European Social Charter.

In some of the assessed countries the regulations of **family benefits** differentiate between own citizens and foreign citizens resident in the relevant state. This violates Article 16 of the European Social Charter. According to this Article, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix to the European Social Charter (revised), shall be equally treated. This means that persons covered by Article 16 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. Hence follows that foreigners being nationals of other Parties of the Charter lawfully resident or working regularly within the territory of the relevant state have to be equally treated.

5.3 Risks and benefits

5.3.1 Medical care

In all of the assessed countries the health care systems afford *care by general practitioners and specialists* provided inside hospitals, in institutions other than hospitals and at the patient's home. The same applies to the *maintenance in a hospital or other medical institution*. The supply with the *necessary pharmaceuticals* causes only few problems, too. Only for **Macedonia** it has to be assumed that pharmaceuticals are not performed. Moreover, there are only few problems concerning *dental care* and all necessary dental prosthesis. Except Albania in all countries these benefits are provided to all insured persons. In **Albania** health dental service preventive and treatment is full covered by state budget for persons less than 18 years of age and in urgent cases for those who are in public hospitals. Hence, the question arises whether persons older than 18 are entitled to this benefits. Another problem is that in Albania medical rehabilitation, prosthesis, spectacles, hearing aids etc. are not covered by the social health care system. The granting of *medical rehabilitation* including the supply and maintenance of orthopaedic and prosthetic appliances is not only lacking in **Albania** but also in **Bosnia and Herzegovina, Kosovo, Macedonia and Serbia**. Only in the reports of **Croatia** and **Montenegro** rehabilitation is mentioned as one of the benefits provided in the health care system. Moreover, *transport of patients* seems to be not covered by the health care system in **Albania, Bosnia and Herzegovina, Kosovo and Macedonia**. *Care by "member[s] of a profession legally recognised as allied to the medical profession, under the supervision of a medical or other qualified practitioner"* is mentioned in none of the country reports.

For most of the assessed countries it is easier to fulfil the requirements of the original Code because it requires fewer benefits than the Revised Code.

In most of the SISP-countries the beneficiary or his breadwinner has to share the cost of medical care through *co-payments*. Only in **Albania** no co-payments have to be paid. It is common to all co-payment rules that vulnerable groups are protected, e.g. by reduced co-payments, complete exemption from co-payment or fixed ceilings for co-payment. Hence follows that these co-payments do not cause hardship to patients. Nevertheless the admissibility of the co-payment rules in **Croatia** is questionable. Another problem concerns **Kosovo** where a co-payment has to be paid for the health services in public hospitals. The fees charged for foreigners (as part of co-payment) are 100% higher than those for habitual residents of Kosovo. This is a violation of the right to equal treatment provided in Article 12 § 4a of the European Social Charter.

5.3.2 Sickness benefit

In all of the assessed countries the responsibility for funding and paying sickness benefit is partly transferred to the employers. Concerning the sickness benefits scheme in the Netherlands, that required employers to pay sickness benefits for up to 52 weeks, the Committee of Ministers decided that the reforms considerably reduced the coverage of the risk of sickness and placed too much burden on the employers⁷². Hence follows that sickness benefits may be paid by employers for the initial period, but not to an extent as in the Netherlands (52 weeks). The above described periods for which the employer has to pay are far from the 52 weeks in the case of the Netherlands. Therefore, in my opinion the mentioned rules in the SISP-countries are in compliance with the Code and the Revised Code.

Concerning the *duration of the benefit* it has to be pointed out that in **Croatia** and in **Albania** the basic duration of sickness benefit is only 6 months. But in **Croatia** an invalidity pension will be paid if a disability lasts longer than 6 months, or – if the person needs to be additionally cured – the benefit may be granted for an additional period of 6 months. The situation in **Albania** is more serious. After 6 months of incapacity for work the benefit can be exceptionally prolonged up to another 3 months if the insured is not entitled to a disability pension. This means that for insured persons, who are not entitled to a disability pension, 9 months is the maximum duration of payment. This period of entitlement in Albania is not in compliance with the Revised Code and the Protocol, which require a length of 52 weeks in each case, or 78 weeks in any consecutive period of three years. The original Code only requires 26 weeks in each case. Nevertheless, the limitation of the sickness benefit (only 75 days) for seasonal and temporary workers who have been employed at least 3 months in the last 12 months also infringes the original Code.

5.3.3 Unemployment benefit

Under the Revised Code, Part IV comprises two contingencies (Article 19): *Total unemployment* and *partial unemployment*. Most of the assessed countries have no special scheme for partial unemployment. Hence follows, that most of the assessed countries are not in compliance with the contingency required under the Revised Code. Nevertheless, the contingency prescribed under the original Code is fulfilled by the assessed countries, because under the Code partial unemployment is no contingency.

⁷² See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (2000).

Moreover, there is a second reason why the contingency under the Revised Code but not under the original Code is problematic for the assessed countries. The Revised Code in principle also protects persons who were not employed or economically active in the past, e.g. school or university graduates and parents of young children returning to paid employment. Contrary to the Revised Code, the Code focuses on a “suspension of earnings”. This means that it covers only persons who already had a job before they became unemployed. What constitutes a “suspension of earnings” according to the Code is to be defined by national laws or regulations. Hence follows that states can freely decide whether unemployment is to be paid in case of voluntary unemployment, involuntary unemployment, dismissal, constructive dismissal or industrial action. This is important for the assessed countries, because in their unemployment insurance schemes involuntarily unemployment is one of the main conditions for the entitlement.

It has to be taken into consideration that in the employment policy of the European Union *preventive measures* are of a great importance. The following measures have to be taken: active and preventive labour market measures including early identification of needs, job search assistance, guidance and training as part of personalised action plans, provision of the social services necessary to support the labour market inclusion of disadvantaged people and contribute to social and territorial cohesion and to the eradication of poverty. To attract more people to employment and to modernise social protection systems, the Commission proposes, inter alia, to promote a new lifecycle approach to work through a renewed endeavour to build employment pathways for young people and reduce youth unemployment; to support for working conditions conducive to active ageing etc.⁷³.

Hence follows that in the assessed countries the active employment policy lags behind the required standards of the European Union. For instance, none of the assessed countries reported on special measures concerning youth unemployment.

The Revised Code allows a *waiting period* of up to three days for each case of unemployment or six days within any period of 12 months. The original Code allows a waiting period of up to seven days for each case of suspension of earnings, except for temporary employment as defined by national laws or regulations. In **Bosnia and Herzegovina** the waiting period is 30 days after the claim was registered. This very long waiting period is not in conformity with the Code and the Revised Code.

In the case of total unemployment the Revised Code allows a *period of entitlement* that is at least 39 weeks during any period of 24 months. In the case of partial unemployment, national legislation may prescribe even shorter periods of entitlement. Systems with variable limits for the duration of benefits based on the length of contribution periods must guarantee a weighted average duration of benefit of at least 39 weeks or half the length of the qualifying period. According to the original Code, systems with variable limits for the duration of benefits based on the length of contribution periods must guarantee an average duration of benefit of at least 13 weeks within 12 months (under the Protocol: 21 weeks). In some of the countries the requirements of the Code and the Protocol but not of the Revised Code are fulfilled.

5.3.4 Old-age pension

Under the Code and the Revised Code, in principle, the prescribed age shall not be higher than *65 years*. But according to the Revised Code either a not reduced *early pension* must be

⁷³ See Integrated guidelines for growth and jobs (2005-2000). Communication from the President of the Commission, of 12 April 2005, including a proposal for a Council Decision on guidelines for the employment policies for the Member States (under Article 128 of the EC Treaty) – Part 2 COM (2005) 141.

granted or the states have to adopt one of the two models prescribed under the Revised Code. These two models are a *combined model of reduced early pension and deferred pension* or a *part-time pension model*. In some countries (**Croatia** and **Bosnia and Herzegovina**) the early pension does not fulfil these requirements.

Moreover, according the Revised Code the mandatory pension schemes in **Kosovo** and **Macedonia** are problematic because neither an early pension is provided nor one of the alternative models is realized. The alternative models are a combined model of reduced early pension and deferred pension and a part-time pension model. Therefore the obligatory old-age pension schemes in Kosovo and Macedonia are not in compliance with the Revised Code.

Taking into consideration the policy documents of the European Union it has to be pointed out that many of the assessed countries made reforms to anticipate the impact of demographic ageing on social pension systems, e.g. the (early) pension age was raised. Nevertheless this is not enough. The design and reform of their pension systems should discourage early withdrawal from the labour market, encourage flexibility in retirement arrangements and promote active participation by older people in the light of the Community. Once again it has to be pointed out that there are some countries where it is not possible to defer the pension.

Concerning the qualifying periods **Bosnia and Herzegovina** is not in compliance with the Revised Code because the requirement that the uniform qualifying period for partial pensions is 15 years of contributions, occupational activity or residence is not fulfilled.

5.3.5 Work accident and occupational disease benefit

In all of the assessed countries *medical care* required because of work injury and professional disease is covered by the health insurance. The problem is that the minimum range of medical care in connection with work injury and professional disease reaches further than that for non-work-related injuries and illnesses. It also covers nursing care at home, in a hospital or another medical institution, convalescent homes and sanatoriums as well as provision and maintenance of prostheses, including dental and surgical prostheses and eyeglasses, and finally emergency care for victims of serious accidents and follow-up care for victims of slight injuries at the place of work. According the descriptions of the health care benefits provided in the assessed countries the minimum range of medical care in connection with work injury and professional disease is not guaranteed. Only in **Albania** a person suffering an employment accident or an occupational disease can be entitled to additional medical care, rehabilitation and retraining necessary to recover lost abilities.

In principle, *benefit for permanent reduction in capacity for work* has to be provided as a periodical benefit in cash. In most of the assessed countries permanent incapacity for work is covered by the pension and invalidity insurance scheme (long-term benefit); permanent disabled persons are entitled to invalidity pension. In **Albania** there are different kinds of benefit. One of them is the benefit in respect of minor permanent incapacity of less than 33%, but more than 10%, which is a lump-sum paid at once. This payment of a lump-sum can be problematic because the Revised Code states that the benefit can only be converted into a lump sum (not less than periodical payments for three years) if the reduction in working capacity is **below 25%** or if the authority has reason to believe that the lump sum will be utilised in an unquestionably advantageous manner (Article 38 § 3). Under the original Code the benefit can be converted into a lump-sum if the reduction in work capacity is only small or if the authority is satisfied that the lump-sum will be properly utilised (Article 36 § 3).

Moreover, under the Revised Code, *waiting periods* are not admissible in the field of work accident and occupational disease benefit. The same rule applies to the Code, except for benefits in the case of short-term incapacity to work which may be subject to a waiting period of three days for each case of suspension of earnings. In most of the assessed countries the employer has to pay a salary compensation for the initial period. As it was mentioned above (see chapter 6.2.2) the Committee of Ministers decided that the sickness benefits scheme in the Netherlands, that required employers to pay sickness benefits for up to 52 weeks, considerably reduced the coverage of the risk of sickness and placed too much burden on the employers⁷⁴. Hence follows that not only sickness benefits but also work accident and occupational disease benefits may be paid by employers for the initial period, but not to an extent as in the Netherlands (52 weeks). Corresponding to this decision the period for which the employer has to pay is too long in **Bosnia and Herzegovina**.

Some of the assessed countries limit the *periods of entitlement* to the benefit for temporary incapacity to work (**Albania** and **Bosnia and Herzegovina**). According the Code and the Revised Code benefits must be granted throughout the contingency. The Committee of experts continuously applies a strict interpretation of the provisions on duration of payments. For instance, it stated that turning a (reduced) long-term pension into a short-term benefit is a violation of the Code⁷⁵. Hence follows that the assessed countries have to pay (reduced) pension for the full duration of the contingency.

5.3.6 Family benefit

As required under the Code, the Revised Code and the European Social Charter the benefits granted to families are very manifold in the assessed countries. They include *periodical payments in cash, tax relief, benefits in kind and social services for families*. In some for he assessed countries (**Croatia, Macedonia and Serbia**) only these periodical payments in cash are prescribed in the submitted documents. The restriction to periodical payments in cash fulfils the requirements of the Code and the Revised Code but not of Article 16 of the European Social Charter. According to this Article Parties undertake to promote not only the economic but also the legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means. Moreover, the benefits granted in **Albania** seem not to be sufficient. The provided periodical payments are not sufficient because social assistance is only given to families with more than two children born simultaneously. Moreover the benefits in kind are too much focused on orphans.

Under the Revised Code a maximum *qualifying period* of six months of residence is admissible only for systems which base entitlement on residence (Article 48). Under the original Code the maximum qualifying period is one month of employment or contributions or six months of residence (Article 43). Moreover, according to Article 2 § 1d of the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors⁷⁶, for entitlement to non-contributory social security benefits, including family allowances, a length of residence period up to 6 months is considered to be in compliance with the general principle of equal treatment. In most of the assessed countries family benefits schemes are social assistance schemes financed from the State Budget. No insurance periods

⁷⁴ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by the Netherlands (2000).

⁷⁵ See the resolution of the Committee of Ministers on the application of the European Code of Social Security by Greece (1997).

⁷⁶ CETS No. 13, signed in Paris 11.12.1953.

completed by parents are required for the entitlement. But in **Croatia** the child allowance is granted to Croatian citizens residing in Croatia and to foreign citizens permanently settled in Croatia for at least 3 years. There is no doubt that this period of 3 years is too long and violates the above mentioned international documents. Moreover, according to Article 16 of the European Social Charter, in Croatia foreigners being nationals of other Parties of the Charter lawfully resident or working regularly within the territory of Croatia have to be equally treated. This requirement is not fulfilled if foreign citizens have to be permanently settled in Croatia for at least 3 years. Moreover, a qualifying period of 3 years is not in compliance with the Code and the Revised Code.

5.3.7 Maternity benefit

According to the Revised Code in case of the contingency “*pregnancy, confinement and their consequences*” the following benefits have to be provided: pre-natal, confinement and post-natal care by a medical practitioner, specialist, midwife or a member of a profession allied to the medical profession; maintenance in a hospital or any other medical institution; necessary pharmaceuticals; dental care and prosthesis; medical rehabilitation including provision and maintenance of prosthesis and other medical aids; transport of the beneficiary. In all of the assessed countries these benefits are provided within the scope of the *medical care* scheme. The problem is that in the submitted documents the informations concerning medical care are based on the common benefits and it is not possible to assess if the special requirements concerning medical care in connection with pregnancy, confinement and their consequences are fulfilled. Nevertheless, it would be easier to fulfil the requirements of the original Code. The Code only requires pre-natal confinement and post-natal care by medical practitioners or qualified midwives and hospitalisation if necessary, including bed and board. Moreover, under the Protocol states must provide pharmaceuticals, for which co-payments of up to 25% are exceptionally admissible.

To avoid abuse, *qualifying periods* for entitlement to medical care are admissible under the Code and the Revised Code. They must not be longer than necessary to avoid abuse. In **Albania** maternity benefit is only granted if the woman has acquired 12 months of insurance in respect of each contingency. I doubt if a qualifying period of 12 months insurance is necessary to avoid abuse. In my opinion this period is too long to be in compliance with the Code and the Revised Code.

In **Croatia** for employed mothers no minimum periods of insurance are required. An unemployed mother is only entitled to cash benefits if she has been a citizen of the Republic of Croatia for 3 years and if she was registered as unemployed with the Employment Bureau no less than 12 months prior to delivery. Moreover, pupils and students who are Croatian nationals provided that they attend school regularly are entitled. The Croatian provision that unemployed mothers have to fulfil special requirements is in compliance with the Revised Code, because the personal scope of application in the field of maternity benefit (suspension of earning) has not to cover unemployed persons. Nevertheless, concerning the entitlement of pupils and students the Croatian regulation is problematic because Croatian nationality is required. Article 12 § 4a of the European Social Charter contains the right to equal treatment. This right requires that states have to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties. National legislation cannot reserve a social benefit to nationals only. Hence follows that the discrimination of foreigners in Croatia is not in compliance with Article 12 of the European Social Charter.

Benefits must be granted throughout the contingency, except for periodical cash benefits which may be limited to a maximum duration of 14 weeks under the Revised Code and 12 weeks under the Code. In **Bosnia and Herzegovina** different rules apply. In Brcko District the benefit is paid for 3 months. This period of 3 months fulfils the requirements of the original Code but not of the Revised Code.

5.3.8 Invalidity benefit

The Revised Code does not only insist on the granting of periodical benefit in cash. Additional, states must provide functional and occupational rehabilitation facilities for disabled persons, take measures to facilitate the placement of disabled persons in suitable employment and grant mobility aids and promote the social integration of disabled persons (Article 62). Under the Protocol, states are also obliged to provide rehabilitation and re-employment facilities for incapacitated individuals as well as assistance in their transfer to another district when necessary to find suitable employment (Article 56 § 2). Moreover, the Revised Code states that contracting states must provide increased or special benefit (in cash and/or in kind) for beneficiaries whose condition necessitates the constant attendance of another person (Article 60 § 8). None of the assessed countries grants mobility aids and promotes the social integration of disabled persons. Only in **Albania, Serbia** and **Montenegro** a special benefit is provided for beneficiaries whose condition necessitates the constant attendance of another person.

Concerning *qualifying periods* it has to be pointed out that the Revised Code and the Code also take into consideration persons who do not fulfil the necessary qualifying periods. The uniform qualifying period for partial pensions is 5 years of contributions, occupational activity or residence. These reduced benefits may be reduced proportionally to the period of contribution, occupational activity or residence. Only in **Albania** a person who has not completed the minimum insurance period, is eligible for a reduced disability pension equal to the ratio between the insurance period completed and the insurance period defined for a full disability pension. In **Serbia** and in **Bosnia and Herzegovina** the general qualifying periods (5 years and 1 year) are short enough to fulfil the required qualifying period for the partial pension, too. For **Croatia** and **Macedonia** it is more difficult to assess if the existing rules on qualifying periods guarantee a uniform qualifying period of 5 years of contributions for partial pensions. Because of special provisions for insured persons disabled before the age of 35 years (Croatia) and 30 years (Macedonia) most of the insured will be able to fulfil the qualifying period of 1/3 of the period between the age of 20 (in Croatia also 23 or 26) and the day of disability. In my opinion that speaks for a compliance with the Revised Code and the Code.

5.3.9 Survivors' benefit

Except **Kosovo** the assessed SISP-countries provide benefits in cash, which fulfil the requirements of the Code and the Revised Code.

In **Croatia, Macedonia, Serbia** and **Montenegro** one of the *qualifying period* models is the performance of 5 years of insurance. This qualifying period is in conformity with the Code and the Revised Code. **Bosnia and Herzegovina** is in compliance with the Code and the Revised Code, too. The family members are entitled to survivors' pension if the insured person fulfilled the conditions for old-age or invalidity pension, and the qualifying period for an invalidity pension only is 1 year of insurance.

5.4 Financing

In most of the assessed countries the social security system is *collectively financed* through contributions and taxations. Moreover, most of the contributions are paid by the employer and the employee as a certain percentage of the income and in some countries there is a minimum and maximum monthly wage for the calculation of contributions. Hence follows, that as a rule, it is guaranteed that the financing does *not cause hardship* to persons with small means. Nevertheless, the general requirement that the financing must also take account of the *capacity of persons protected to contribute* is problematic in some countries.

Only in **Kosovo** all the schemes are financed by the consolidated budget of Kosovo with the exception of the second and third pillar of the old-age pension scheme. This means that only the savings pension scheme and the supplementary pension scheme are covered by equal contributions of employers and employees. Hence follows that in Kosovo the social security is not collectively financed, as it is required under the Code and the Revised Code.

Concerning the *pension systems* it has to be pointed out that most of the assessed countries still have a *pay-as-you-go system*. In **Croatia** the second pillar is a *funded system*. The funded systems are based on individual “accounts” for each person protected. It is not yet clear if funded financing is in compliance with the Code. There are suggestions for an analogy based on Article 6 of the Code. This provision allows that voluntary insurance systems (e.g. the third pillar in pension systems) are taken into consideration for an assessment of compliance with the Code. In **Kosovo** the previous pay-as-you-go scheme was replaced by a three pillar pension scheme. Hence follows that the admissibility of this system is more uncertain than in the case of Croatia.

In this respect a broad interpretation of the Code is to prefer. It has to be taken into consideration that the European Union encourages the Member States to find an appropriate balance between funded and pay-as-you-go systems⁷⁷. One of the objectives of the Commission to ensure the long term sustainability of the pension systems of the European Union is the maintenance of the adequacy of pensions and the ensuring of consistency of pension schemes within the overall pension system. The three pillars of pension systems, operating in combinations decided by the Member States, should enable people to remain financially autonomous in old age⁷⁸.

Hence follows that the SISP-countries have to undertake reforms which concern the three pillars of the pension systems, namely basic public schemes, occupational schemes and individual pension plans.

⁷⁷ See Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. A concerted strategy for modernising social protection [COM (1999)347].

⁷⁸ See Communication from the Commission to the Council, to the European Parliament and to the Economic and Social Committee. The Future Evolution of Social Protection from a Long-Term Point of View: Safe and Sustainable Pensions [COM (2000) 622].

