Strasbourg, 23 December 2014

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS XX-2(2013) OF THE EUROPEAN SOCIAL CHARTER

(Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, "The former Yugoslav Republic of Macedonia" and United Kingdom)

Detailed report of the Governmental Committee established by Article 27, paragraph 3, of the European Social Charter[1]

Written information submitted by States on Conclusions of non-conformity is the responsibility of the States concerned and was not examined by the Governmental Committee. This information remains either in English or French, as provided by the States.

[1] The detailed report and the abridged report are available on www.coe.int/socialcharter.

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter "The Governmental Committee") made up of delegates of each of the forty-three states bound by the European Social Charter or the European Social Charter (revised)[2]. Representatives of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity. Representatives of both the International Organisation of Employers (IOE) and the Confederation of European Business (BUSINESSEUROPE) were also invited to attend the meetings in a consultative capacity. IOE attended the meeting held from 19 to 23 May 2014.

2. Since a decision of the Ministers' Deputies in December 1998, the other signatory states were also invited to attend the meetings of the Governmental Committee (Liechtenstein, Monaco, San Marino and Switzerland).

3. The supervision of the application of the European Social Charter is based on an examination of the national reports submitted at regular intervals by the States Parties. According to Article 23 of the Charter, the Party "shall communicate copies of its reports […] to such of its national organisations as are members of the international organisations of employers and trade unions". Reports are made public on www.coe.int/socialcharter.

4. Responsibility for the examination of state compliance with the Charter lies with the European Committee of Social Rights (Article 25 of the Charter), whose decisions are set out in a volume of "Conclusions". On the basis of these conclusions and its oral examination during the meetings of the follow-up given by the States, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers which may "make to each Contracting Party any necessary recommendations" (Article 29 of the Charter).

5. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter concerned Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom. Reports were due by 31 October 2012.

6. Conclusions XX-2 (2013) of the European Committee of Social Rights were adopted in December 2013 (Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom).

7. The Governmental Committee took note that no further ratification has been done in the last reporting cycle.

8. On 2 April 2014, the Committee of Ministers adopted at its 1196th meeting a new procedure of the reporting system on the European Social Charter entitled 'Ways of streamlining and improving the reporting and monitoring system of the European Social Charter'. In 2014, the Governmental Committee applied already the new procedure by examining orally only the conclusions of non-conformity as selected by the European Committee of Social Rights.

[2] List of the States Parties on 1 December 2014: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

9. The Governmental Committee held two meetings in 2014 (19-23 May 2014, 13-17 October 2014) with Mme Jacqueline MARECHAL (France) in the Chair. Mme MARECHAL was assisted by the Bureau, composed of Ms Elena VOKACH-BOLDYREVA (Russian Federation, 1st Vice-Chair), Ms Joanna MACIEJEWSKA (Poland, 2nd Vice-Chair), Ms Lis WITSØ-LUND (Denmark) and Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania).

II. Examination of Conclusions XX-2 (2013) of the European Committee of Social Rights

10. The abridged report for the Committee of Ministers only contains summaries of discussions concerning national situations in the eventuality that the Governmental Committee proposes that the Committee of Ministers adopt a recommendation or renew a recommendation. No such proposals were made in the current supervisory cycle. The detailed report is available on www.coe.int/socialcharter.

11. The Governmental Committee applied the rules of procedure adopted at its 125th meeting (26 – 30 March 2012). In applying these measures and according to the modalities decided by the Bureau in March 2014, it debated orally only the Conclusions of non-conformity as selected by the European Committee of Social Rights.

12. The Governmental Committee also took note of the Conclusions deferred for lack of information or because of questions asked for the first time, and invited the States concerned to supply the relevant information in the next report (see Appendix III to the present report for a list of these Conclusions).

13. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report. The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity.

14. During its examination, the Governmental Committee took note of important positive developments in several States Parties. It also asked governments to take into consideration any previous Recommendations adopted by the Committee of Ministers.

15. The Governmental Committee urged governments to continue their efforts with a view to ensuring compliance with the European Social Charter.

16. The Governmental Committee proposed to the Committee of Ministers to adopt the following Resolution:

> **Resolution on the implementation of the European Social Charter during the period 2008-2011 (Conclusions XX-2 (2013), provisions related to the thematic group "Health, social security and social protection")**
>
> *(Adopted by the Committee of Ministers on ....*
> *at the .... meeting of the Ministers' Deputies)*
>
> The Committee of Ministers,[3]

[3] At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are (1 December 2014):
Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ice-

Referring to the European Social Charter, in particular to the provisions of Part IV thereof;

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, “the former Yugoslav Republic of Macedonia” and the United Kingdom;

Considering Conclusions XX-2 (2013) of the European Committee of Social Rights appointed under Article 25 of the Charter;

Following the proposal made by the Governmental Committee established under Article 27 of the Charter,

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XX-2 (2013) of the European Committee of Social Rights and in the report of the Governmental Committee.

land, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

EXAMINATION ARTICLE BY ARTICLE[4]

Conclusions XX-2 (2013) –European Social Charter (ESC)

Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, "The former Yugoslav Republic of Macedonia" and United Kingdom

Article 3– THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

Article 3§1 – Safety and health regulations

ESC 3§1 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 3§1 of the Charter on the ground that certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

17. The Representative of Germany provided no information at the meeting.

In the meantme the following written statement was provided:

"In line with European law requirements, there was no general application of the legal provisions on safety and health at work to self-employed persons in Germany. Insofar there have been no changes in Germany's position. Their legal status alone precluded that an employer's duty of care to his/her employees applied to self-employed persons as well. However, there was a wide range of measures in Germany to promote occupational health and safety for self-employed persons. Both the level of legal provisions and technical/subject-specific aspects served as basis for these measures. Under the law, the possibility existed to make the self-employed compulsorily insured in statutory accident insurance by applying the statutes of the accident insurance funds, and hence to place them under the protection of the accident prevention regulations (section 3 of Book Seven of the Social Code). Self-employed persons working in agriculture were already compulsorily insured in accident insurance by force of law. In the period under review and also in future, all self-employed persons had and will have the possibility at any time to voluntarily comply with the occupational health and safety regulations applicable to employers and employees."

ESC 3§1 GRECE

The Committee concludes that the situation in Greece is not in conformity with Article 3§1 of the Charter on the ground that the self-employed are not sufficiently covered by occupational safety and health regulations.

18. The Representative of Greece said that a number of legislative measures were taken and information campaigns launched since the reference period thus providing today sufficient coverage of the self-employed with respect to hygiene and safety at work.

19. For example, the European list of occupational diseases had been integrated into national law by Presidential Decree. This decree includes the self-employed.

[4] State Parties in English alphabetic order.

20. At Conferences and congresses, information campaigns had been organized in the context of the European Campaign 2012 – 2013 for the Health and Safety at Work called 'Prevention of risks at work with everybody's participation'.

21. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Article 3§2 - Enforcement of safety and health regulations

ESC 3§2 GRÈCE

The Committee concludes that the situation in Greece is not in conformity with Article 3§2 of the Charter on the ground that during the reference period the prevalence of occupational diseases was not adequately monitored.

22. Additional information is to be provided in the next National Report.

ARTICLE 11 – RIGHT TO PROTECTION OF HEALTH

Article 11§ 1 - Removal of the causes of ill-health

ESC 11§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 11§1 of the Charter on the ground that insufficient efforts have been undertaken to reduce the prevailing high maternal mortality rate.

23. The Representative of Latvia recalled the most recent figures with respect to maternal mortality: 26.1 deaths/100 000 births in 2010, 5.4 deaths/100 000 births in 2011 and 20.5 deaths/100 000 births in 2012. She emphasized that each maternal death was to be assessed individually.
24. She insisted that the issue was high on the agenda of her Government. For example, 2012 had been proclaimed as 'Year of Mothers and Children Health'.
25. In addition, access to health care for pregnant women had been one of the policy priorities of the Medical Treatment Law and in that context the Government worked in close collaboration with the World Health Organization Regional Office in Europe.
26. The aim of all the efforts pursued was to prevent mistakes in the future thus reducing further the maternal mortality rate.
27. The GC took note of the information provided and decided to await the next assessment of the ECSR.

ESC 11§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 11§1 of the 1961 Charter on the ground that equal access to health care is not ensured because of long waiting lists.

28. The representative of Poland provided the following information in writing:

Les modifications suivantes, dont la mise en oeuvre permettra d'écourter les listes d'attente pour les visites ches les médecins spécialistes, sont programmées :

Les médecins pédiatres et les spécialistes de médecine interne pourront contracter les soins médicaux de base, ce qui se traduira par un nombre plus grand de médecins dans les services de santé de base, la possibilité de choix pour le patient, qui pourra désormais décider, s'il veut être suivi par un spécialiste de médecine interne, un pédiatre ou un généraliste.

- La création de la consultation destinée uniquement à la délivrance d'une ordonnance, ce qui permettra d'écourter le temps d'attente d'une visite chez le médecin de famille afin de renouveler une ordonnance.
- La majoration du coût de la première visite chez le médecin spécialiste, si le patient est diagnostiqué et placé sous traitement dans un délai maximum de 6 semaines, à l'issue duquel le médecin spécialiste décidera de diriger le patient chez le médecin généraliste. C'est ce qui permettra d'augmenter le nombre de visites des nouveaux patients et encouragera un diagnostic et un traitement diligents.
- Suppression de l'obligation de consulter un médecin spécialiste une fois tous les 12 mois, pour que le médecin généraliste puisse renouveler une ordonnance, ce qui écourtera les listes d'attente ches les spécialistes.
- Création de consultations auprès des hôpitaux afin de garantir aux patients les visites après les interventions médicales.
- Changement du coût de l'hospitalisation d'un jour, dont le but est d'abréger le séjour du patient à l'hôpital, si un séjour prolongé n'est pas dicté par des raisons médicales.
- Elimination de la donnée "durée de l'hospitalisation" des groupes homogènes de diagnostic (DRG) afin d'abréger le séjour du patient à l'hôpital.
- Etablissement de principes clairs de qualification pour la chirurgie de la cataracte et l'implantation d'endoprothèses, afin de n'effectuer ces interventions que chez les patients qui en ont réellement besoin, limitant ainsi la possibilité de s'inscrire "à tout hasard".
- Création de spécialisations modulaires, ce qui accélèrera et facilitera le processus de formation des médecins.
- Augmentation de la compétence des médecins titulaires du premier degré de spécialisation et en cours de spécialisation, afin d'augmenter le nombre de médecins dans le système.
- Séparation de la liste d'attente des nouveaux patients de celle des patients en cours de traitement, ce qui permettra de montrer le temps réel d'attente pour la première visite.
- Création, pour les unités de soins médicaux, de l'obligation de dresser des rapports hebdomadaires sur la longueur des listes d'attente (nombre de personnes en attente et date du premier délai libre), afin d'actualiser en continu les informations concernant le temps d'attente.
- Système électronique de tenue des listes d'attente afin de gérer des listes d'attente.
- Rapports concernant le nombre de personnes en attente dans les institution du Fonds National de Santé sur la base des numéros PESEL (numéro d'identité national), ce qui permettra de vérifier le nombre d'institutions, où le patient attend simultanément une visite.
- Rayer de la liste d'attente plusieures visites réservées par le patient chez les spécialistes d'un même domaine et ne laisser que la visite, pour laquelle le temps d'attente est le plus court, afin d'éviter que le même patient figure sur plusieurs listes d'attente pour le même spécialiste.
- Création de l'obligation, pour le patient, de fournir dans un délai de 14 jours à compter de son inscription sur la liste d'attente, de l'original de la demande de consultation, ce qui incitera les patients à se présenter en consultation et évitera qu'ils ne s'inscrivent sur plusieurs listes à la fois.
- Extension de la liste d'examens diagnostiques que le médecin généraliste pourra prescrire, et notamment : FT3 et FT4, le Holter cardiaque, l'électrocardiogramme d'effort, le MAPA, la gastroscopie, la colonoscopie, la spirométrie. Il y aura moins de patients attendant une visite chez le spécialiste, afin d'obtenir une prescription pour les examens diagnostiques. Cette mesure permettra de réaliser tout le processus diagnostique et le traitement dans le cadre des compétences du médecin généraliste.

– Création d'un fonds de financement des examens onéreux, dont l'objectif sera de construire un système motivateur de financement du médecin généraliste. Le médecin de famille pourra faire appel à ces moyens financiers uniquement, s'il les destine à un diagnostic et des examens supplémentaires.
– Création des paquets diagnostiques au moment de la première visite du patient, par ex.: diagnostic de base des maladies de la thyroïde, ce qui aura pour objectif de prévenir que le patient ne se voit ordonner inutilement certains examens ou analyses.

Certaines actions énoncées ci-avant ne nécessitent pas le changement des actes légaux actuellement en vigueur, mais uniquement l'amendement des règlements édictés par le Président du Fonds National de Santé.

Les travaux législatifs pour réaliser le "paquet des listes d'attente" comprennent des amendement à apporter aux actes législatifs suivants:

– la loi du 27 août 2004 sur les prestations des soins de santé financés avec des deniers publics,
– la loi du 5 décembre 1996 sur les métiers de médecin et de médecin dentiste,
– la loi du 2 juillet 2004 sur la liberté d'exercer une activité économique,
– la loi du 15 avril 2011 sur l'activité médicale,
– la loi du 12 mai 2011 sur le remboursement du coût d'achat des médicaments, des denrées alimentaires destinées à une alimentation spéciale et de produits médicaux,
– le règlement du Ministre de la Santé du 10 octobre 2011 sur la façon et les modalités de financement par le budget de l'Etat des soins de santé,
– le règlement du Ministre de la Santé du 17 décembre 2012 sur le caractère des données concernant les personnes inscrites à l'assurance maladie et les payeurs de cotisations, les personnes qui bénéficient des prestations en vertu des règlements sur l'assurance maladie et l'assurance accident, les personnes ayant fait valoir leur droit à la retraite ou à la pension ou bien les salariés en congé non payé ainsi que le mode précis leur transmission,
– le règlement du Ministre de la Santé du 29 septembre 2004 sur les statut du Fonds National de Santé,
– le règlement du Ministre de la Santé du 6 mai 2008 sur les conditions générales des contrats de prestation des soins de santé,
– le règlement du Ministre de la Santé du 15 décembre 2004 sur les modalités de publication des avis sur la procédure relative à la conclusion de contrat pour la prestation des soins de santé par le Fonds National de Santé, l'invitation à participer aux négociations, déposition des offres, la convocation et la révocation de la commission de concours et de sa mission,
– le règlement du Ministre de la Santé du 27 juillet 2005 sur les informations indispensables collectées dans le système informatique du Fonds National de Santé et l'éventail ainsi que les modalités de leur transmission au ministre compétent pour les questions de santé, aux voïvodes et diétines de voïvodies;
– le règlement du Ministre de la Santé du 20 décembre 2012 sur la création du Registre national des Cancers.

Le premier janvier 2015 est la date d'entrée en vie des changements. C'est pourquoi l'adoption par le Conseil des Ministres du projet de loi sur l'amendement à la loi sur les prestations des soins de santé financés avec les deniers publics et certaines autres lois est prévue pour le IIIe trimestre de 2014. On prévoit que les actes exécutifs énumérés plus haut resteront en vigueur pendant 12 mois à compter de l'entrée en vigueur de la loi (comptée à partir du 1er janvier 2015). La progression des travaux législatifs est à suivre sur le site du Centre Législatif du Gouvernement: http://legislacja.rcl.gov.pl/lista/516.

La loi d'amendement à la loi sur les prestations de soins de santé financés à partir des deniers publics donnant aux médecins pédiatres et aux spécialistes de médecine interne, la possibilité de prêter ces soins dans le cadre des soins médicaux généraux (MG), et contribuant ainsi à une plus grande accessibilité aux soins de santé dans ce domaine (amendement à la loi sur les soins de santé financés par les fonds publics indépendant de l'amendement dont il est question plus haut), a été adoptée par la Diète le 21 mars 2014, et attend la signature du Président de la République et sa publication.

Dans le cadre du "paquet des listes d'attente", une procédure relative à l'amendement de la loi sur les métiers d'infirmière et de sage-femme et de certaines autres lois a été engagée. Le projet d'amendement a été transmis pour les consultations extérieures (ministères et autres institutions de l'administration de l'Etat) avec la date limite de soumission des remarques fixée au 23 avril 2014 et les consultations publiques, qui doivent se terminer le 8 mai 2014. La date limite des consultations publiques pouvant être reportée, si nécessaire, et de ce fait il est actuellement difficile de prévoir le calendrier précis des travaux sur le projet.

Ce projet prévoit l'augmentation – sous certaines conditions – des prérogatives professionnelles des infirmières et des sages-femmes titulaires de diplômes de l'enseignement supérieur. Les infirmières et les sages-femmes pourront profiter de droits, qui résulteront des stipulations de la loi amendée, à partir du 1er janvier 2016.

Dans le cadre des travaux législatifs liés à l'amélioration du fonctionnement des listes d'attente, qui ont lieu actuellement, il est procédé à l'amendement des règlements suivants:

- règlement du Ministre de la Santé du 23 septembre 2013, sur les soins garantis dans le cadre des soins médicaux généraux,
- règlement du Ministre de la Santé du 6 novembre 2013, sur les soins garantis dans le cadre des soins médicaux spécialisés ambulatoires,
- règlement du Ministre de la Santé du 22 novembre 2013, sur les soins garantis dispensés par les hôpitaux,
- règlement du Ministre de la Santé du 9 décembre 2013, sur les soins garantis dans le cadre des soins infirmiers et des soins de longue durée,
- règlement du Ministre de la Santé du 21 décembre 2010 sur les catégories et les contenus de la documentation médicale et des modalités de sa conservation.

Les projets d'amendements aux règlements, à l'exclusion du tiret 3, ont été transmis pour les consultations publiques, la date limite de soumission des remarques ayant été fixée au 8 mai 2014. Le projet d'amendement au règlement sur les soins garantis dispensés par les hôpitaux sera soumis aux consultations publiques ultérieurement. On prévoit l'adoption des dispositions amendées avant la fin de septembre 2014 et leur entrée en vigueur le 1er janvier 2015.

Article 11§2 - Advisory and educational facilities

ESC 11§2 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 11§2 of the 1961 Charter on the grounds that it has not been established that:

- there are adequate measures for counselling and screening for the population at large;
- there are adequate measures for counselling and screening for pregnant women and adolescents.

29. The representative of Greece provided the following information in writing:

In addition to what has been mentioned in the 23rd Hellenic Report for the Article 11 ESC, we hereby report the following, regarding the provision of consulting and educational means for the promotion of health:

Elementary Education

i. Educational means

According to the applicable legislation[5], among the required supportive documents for the students' enrolment in the Kindergarten and the A' class of the elementary school, are also the following :

- Exhibition of the Child's Health Booklet (CHB) or presentation of another proof in which is shown that the prescribed vaccinations have been made.
- The Student's Personal Health Booklet (SPHB)

In addition to what has been reported in the previous Hellenic report for the SPHB, we also refer to the following : According to a Common Ministerial Decision of 2014, it was determined the type, the content, the terms and the conditions of preparation, grant, safeguarding, processing and development of the SPHB.

Pursuant the mentioned Common Ministerial Decision[6], the SPHB was established as a supportive document for the children's enrolment in the kindergarten and the A' Class of the Elementary School as well as a medical certificate of the students' health follow up during their studies in the school units of Elementary and Secondary Education.

The SPHB :

a) Has preventive character and aims to the protection and defense of the health and the life of male and female students, as well as the support thereof by taking proportionate measures,

b) Is a mean of communication between the doctor and the school unit and contains the conclusions of the student's medical examination that concern the school,

c) Is necessary as supportive document for the students' enrolment in the Kindergarten and the A' Class of the Elementary School,

d) Has the nature of a medical certificate,

e) Is necessary for the participation of the male and female students in the course of Gymnastics, the school sport activities and in general the school activities.

f) Informs the teaching staff of the school unit that the students attend for issues connected to the health state and their participation in the learning process.

The SPHB is kept by responsibility of the Directors of the school units of the Elementary and Secondary Education. The SPHB contents are notified to the competent teachers as well as the doctors or other competent, per case health professionals, in order to take measures of protection and defense of the students' health and life as well as the support of them, in the context of their competencies.

The doctors and the health professionals who serve at the nearest Elementary Degree Unit of Health Care of the National Health System (NHS) (Health Centers, Multifunctional Regional Medical Offices, Hospital Outpatients' Clinics etc) of the school unit of the student's studies may, with the consenting opinion of the parent/guardian, be aware of the SPHB content for the students presenting serious health problems (i.e. cardiological problems, allergies, neurology, metabolism problems etc.) so as by their relevant notification, they have the possibility to immediately intervene in cases of emergency, in cooperation with the competent principal of the school unit.

[5] Cases 2, 3 and 4 of the par.2 of the article 11 of the L. 4229/2014 (Gov.Gaz. 8 Iss.A'/10.1.2014) as replaced (cases 3 & 4) with the article 53 of the L. 4238/2014 (Gov.Gaz. 38 Iss.A'/17.02.2014)

[6] The ref.no. Φ6/304/75662/Ψ1/16.05.2014 Common Ministerial Decision (Gov. Gaz. 1296B/21.05.2014)

The mentioned legislative settlement was made, upon cooperation of services of the Ministry of Education with a scientific group and administrative executives of the Ministry of Health, to the direction of integration of the mentioned health certificates in one form, the Student's Personal Health Booklet (SPHB), so as social and financial matters that concern the citizens but also aggravate the State Budget, be eliminated.

ii.Advisory Means

For the school year 2013-2014 the relevant Common Ministerial Decision of the Ministers of Education and Religion and Agricultural Development and Food[7] was signed, that concerns the determination of areas for the implementation of the plan of promotion of the fruit consumption in the schools, in the school year 2013-2014, according to which, the "Promotion Plan of Fruit Consumption at Schools" is implemented during the school year 2013-2014 in the public and private elementary schools of the Region of Attica and the Regional Unity of Thessaloniki, in 344 school units.
By the implementation of the promotion plan for fruit consumption at schools is expected :

- The enhancement of the students' positive attitude to their nutritional habits, via the focused, organized intervention.
- The development of argumentation in the field of health nutrition, via a group-cooperative interaction.
- The change of the dietetic behaviors to the direction of containment of the epidemic phenomenon of children's obesity.

The mentioned "Plan for the Promotion of Fruit Consumption at Schools" is implemented for third consecutive year at the Elementary Schools of the country.

Secondary Education

The students, via the material of various courses, have the opportunity to deal with matters pertaining to the health protection. Indicatively, the following are being mentioned:

- The course Physical Education of A', B' and C' Class of Junior High, in the 3rd Chapter, with the title : "The Value of the Lifelong Learning"
- The course of Biology of the A' Class of Junior High, in the 3rd Chapter with the title "Transport and expulsion of substances"
- The course of Household Economy of the A' Class of Junior High, in the 4th Chapter with the title "Health Treatment-Accidents Prevention" and the 3rd Chapter with the title "Nutrition"
- The Course of Biology of the C' Class of Junior High, in the 4th Unity with the title "Diseases and the factors related to their appearance"
- The Course of Biology of General Education of the C' Class of the General Lyceum, in the 1st Chapter with the title "Man & Health".
- The Course of History of General Education, of the C' Class of the General Lyceum, Chapter Z', Unity 2nd, with the title "Culture of the 20th century" (where reference is made to the work of Georgios Papanikolaou and the preventive Pap Test for the diagnosis of the uterus cancer).

The implementation of the Health Programmes in the schools is also being noted as this has been analyzed and described in the previous Hellenic report on article 11 ESC.

Information is herein below presented regarding:

***events and programs implemented by the General Secretariat of New Generation*.**

Event for the World AIDS Day

[7] It is about the no. 5864/132360/31.10.2013 (Gov.Gaz. B, 2798) Common Ministerial Decision

The General Secretariat of New Generation, organized in 2010, on the cause of the World AIDS Day, a great event, inaugurating at the same time an interactive communication procedure with the youth in the social media. In this context, it organized on 10.12.2010 a live internet discussion about the virus. The replies to the questions posed by the youth, were given live by a group of scientists, consisting of doctors, psychologists, agencies and organizations dealing with the issue. The total of the questions-replies was posted at the website of the General Secretariat of New Generation in the form of an electronic information guide.
At the same time, the General Secretariat of New Generation, taking into account the great increase of the HIV virus cases in Greece, proceeded in November 2011 to the issuance and distribution of the new information guide for AIDS. Since 2012, it was also disposed in 4 additional languages (Russian, Albanian, English and French).

Co-Organization – "Programme for the Support of children-families under the poverty threshold in Elefsina"

The General Secretariat of New Generation, aiming to the protection of the children's rights, in the context of the mentioned Programme, developed a cooperation with the Center of Pedagogical and Artistic Training "SCHEDIA" for the implementation of a multi-discipline action for fighting poverty via the support of children or families found under the poverty threshold in degraded areas of Athens and especially, children of greek families or even immigrants in the area of Elefsina/Magoula, which included a programme of school support of elementary education and junior high children, simultaneous provision of food rations and psychokinetic support of children and parents, as well as a research for investigating policies for the child in other European countries. The term of the Programme was 7 months (April-October 2012). The total number of the benefited children amounted up to 60, with daily presence of 30 children at least.

«Subsidy of the Aristotle University of Thessaloniki for the preparation of a programme of physical and nutritional treatment in persons of child age to the end of preventing the children sub-motility and obesity by the General Secretariat of New Generation»

The sector "Physical Activity and Enjoyment" and the Workshop for "Learning and Controlling Motility" (Department of Physical Treatment Science and Sports) of the Aristotle University of Thessaloniki will prepare in the immediately oncoming period a programme for the physical and nutritional education of persons in children age to the effect of preventing the children sub-motility and obesity. The programme will be addressed to students of public and private schools of elementary education of the municipalities of the city planning complex of Thessaloniki and the county of the Prefecture of Thessaloniki, their parents and their families. The minimum number of the students to receive this intervention is calculated to 1000 and the maximum number to 1200 while the term of this intervention will be three months. The budget of the programme totally amounts up to twenty thousand euro (20.000€).

Research Project with the title "Prevention of diseases in the respiratory system in youth - creation of an allergiology chart for the area of Alexandroupolis»

The General Secretariat of New Generation, in cooperation with the Democritus University of Thrace Department of Medicine-Otorinolaryngology Clinic, prepared a research project with the title "Prevention of diseases in the respiratory system in youth - creation of an allergiology chart for the area of Alexandroupolis" in the period 01.02.2013 until 31.01.2014 with the cost of 55.000€. The aim was to detect the concentrations of the inhaled air-allergens in the area of Alexandroupolis-Evros (range 100 klm) and be created an allergiology chart of such area. Also (the goal was) the daily updating of the citizens via the internet so as they take the appropriate precautionary measures for those with sensitivities for various causes. The data base

created which will continue being enriched may be used as a guide for other areas of the country as well.

Article 11§3 - Prevention of diseases

ESC 11§3 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 11§3 of the 1961 Charter on the ground that it has not been established that sufficient measures have been adopted to improve the right to a healthy environment for persons living in lignite mining areas.

30. The representative of Greece provided the following information in writing:

Following the information that was included in the 23rd greek report on the measures taken for the improvement of the right to a healthy environment of people living close to the lignite mining areas, we inform you on the following:

From 1-1-2016, the existing steam electric stations (SES) at Kozani, Florina and Arkadia (they are installed at lignite mining areas and are lignite-fired plants) are required to comply with the **new stricter emission limits of gaseous pollutants** (particles, sulphur dioxide, oxides of nitrogen) set by the new European Directive 2010/75/EU (replacing Directive 2008/1/EU and from 1-1-2016 replacing Directive 2001/80/EC) on industrial emissions (integrated pollution prevention and control) or strictly observe the Transitional National Emission Reduction Plan (prepared in accordance with article 32 of the above mentioned Directive and approved by the European Commission) provided that they have been included in it. The new Ptolemaida SES Unit V, as a new installation, the construction of which is scheduled and for which a permit as lignite-fired plant with anti-fouling technology is granted (desulphurization system, electrostatic filters), is required at start-up to comply with the new limits according to Directive 2010/75/EU.

At Agios Dimitrios SES units, a desulphurization system (**anti-pollution technology**) is scheduled to be installed, while at Megalopolis SES Units III, IV such a system is already functioning properly since 2013, while at Melitis SES it is already functioning before 2012. All lignite-fired stations (SES) are equipped with electrostatic filters (anti-pollution technology) which are replaced according to the Best Available Techniques (for example at Agios Dimitrios SES Units they have already been replaced before 2012) so that the emission limits of gaseous pollutants established by the European Committee are met due to their performance.

From 1-1-2016, Kardia and Amindeo SES Units will be set at **restricted mode of operation** (17.500 operating hours until 31-12-2023), in accordance with article 33 of Directive 2010/75/EU. Ptolemaida SES Unit I **has been shut down** (already before 2012) while Megalopolis SES Units I and II have already been shut down since 2013. Similar decision has been taken also for LIPTOL SES Units (implementation from 2014). Moreover, Prolemaida SES Unit II is gradually set at stand-by mode (from 2014). Furthermore, the construction of Megalopolis SES natural gas-fired Unit V is nearing its completion. Already since 2011 the limits set at the National Emission Reduction Plan are met (most lignite-fired units are included in the plan).

The **air quality** at lignite mining areas, where the lignite-fired plants of the country are also located, **is monitored** through a network of 3 stations in Arcadia and 9 stations in Kozani and Florina. A Committee has been established, already since May 2014, consisted of jointly competent Units of the Ministry of Environment and of DEH SA (owner of lignite mines and lignite-fired SES) for the planning coordination of urgent environmental issues (emergency measures when emission limit values are exceeded) at the above mentioned areas.

All the above are progressively improving the air quality in the lignite mining areas in question.

The above information is specified and analyzed as follows:

1. Replacing old Units with new, environmentally friendlier units of modern technology and higher performance

1.1 Scrapping of old units

- Shut down of Prolemaida SES Unit I, by decision No. D5/HL/A/F7/161/3800/09.03.2011 of the Ministry of Environment.
- Definitive scrapping of Megalopolis A' SES Units I and II, by Decision of the Regulatory Authority for Energy (RAE) No. O-57886/18.03.2014 (they have been shut down since 2012).
- Definitive scrapping of LIPTOL SES Units I and II, by Decision No RAE/O-57886/18.03.2014 (they have been shut down since 2013).
- Shut down of Prolemaida SES Unit II by DEH (RAE is considering the possibility of setting the unit at stand-by mode for emergency purposes).
- Minimizing operation of Aliveri SES oil-fired Units III and IV and Lavrio SES oil-fired Units I, II and III.

DEH has filed an application to the RAE for the definitive scraping of Lavrio SES Units I, II and III, Aliveri SES Units III and IV, Agios Georgios SES Units 8 and 9 and Megalopolis SES Unit II. Pursuant to the RAE decision No O-57886/18.03.2014, the decision on setting the above mentioned Units at stand-by for emergency purposes is still pending.

According to DEH Operational Planning, all Ptolemaida SES Units will gradually be shut down till the end of 2015.

Furthermore, the following is being reported as regards the village of Klitos : The mandatory disappropriation of the village of Klitos has already been completed, since 2010. The residents have been compensated and in the area of the former village, the lignite mine of South field is being developed.

1.2 Construction of new modern units

- On August the 12th 2013, Aliveri SES natural gas-fired combined cycle Unit V, with 416,95 MW net capacity started operating commercially.
- The construction of Megalopoli B' SES natural gas-fired combined cycle Unit V, with net input of 811 MW is in progress.
- On the 9th of March 2013 the Contract was signed for the design and construction of a new steam electric pulverized lignite-fired Unit at Ptolemaida (Unit V), with mixed input of 660 MW, with thermal input of 140 MWth for district heating. For this Unit (that will replace the existing Ptolemaida SES) provision is made for the installation of CO2 capture and storage equipment, depending on the outcome of the assessment of Carbon Capture readiness.
- In 2013 the Environmental Conditions Approval Decision was issued for the construction and operation of a new thermal low sulfur oil-fired and natural gas-fired plant with a total net input of 115,439 MW at Piso Kambos and Plaka Steni of South Rhodes Municipality.
- Regarding the island of Crete, priority is given to the design and implementation of the electricity interconnection of the island with the mainland, in accordance with the final Decisions of the State on the long-term energy planning of the island.
- For the non-interconnected system, apart from Crete and Rhodes, provision has been made for the gradual inclusion of new smaller thermal units of a total input of almost 100 MW in the remaining isolated small networks together with the electrical interconnection of Cycla-

des which is of utmost importance both in terms of security of supply as well as in terms of cost effectiveness.

2. Compliance with the existing environmental legislation on Large Combustion Plants (Directive 2001/80/EC and Directive IPPC-2008/01/EC)

All DEH thermal plants comply with the provisions of the Directive on Large Combustion Plants (2001/80/EC) and Directive IPPC (2008/01/EC). In addition to the works for the reduction of dust mentioned in the last report of the country (installation of new electrostatic filters at Agios Dimitrios SES Units I-IV), which resulted in significant reductions in dust emissions (see Chart 1), in 2012 the installation and operation of flue gas desulphurization system was completed at Megalopolis A' SES Unit III.

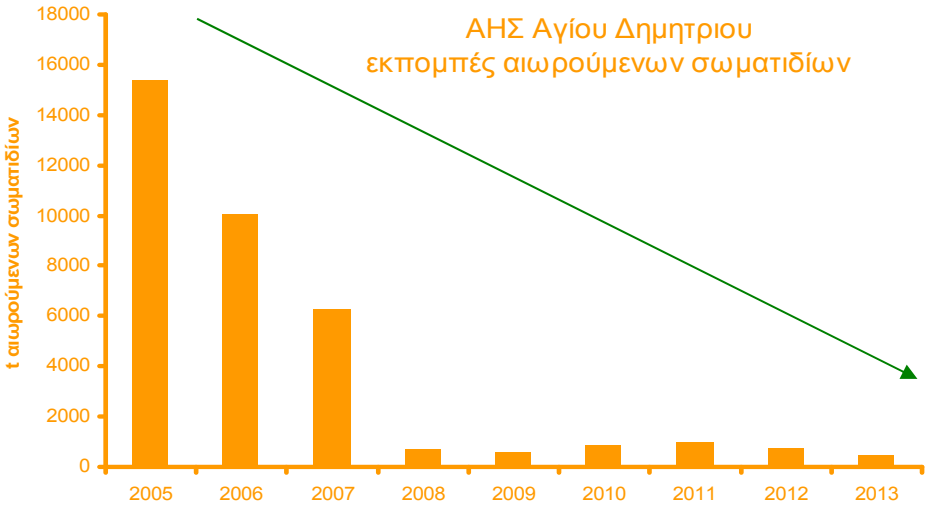
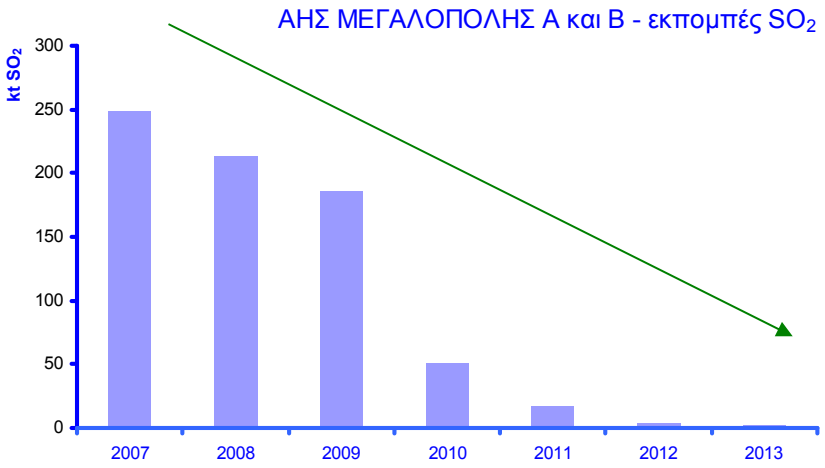
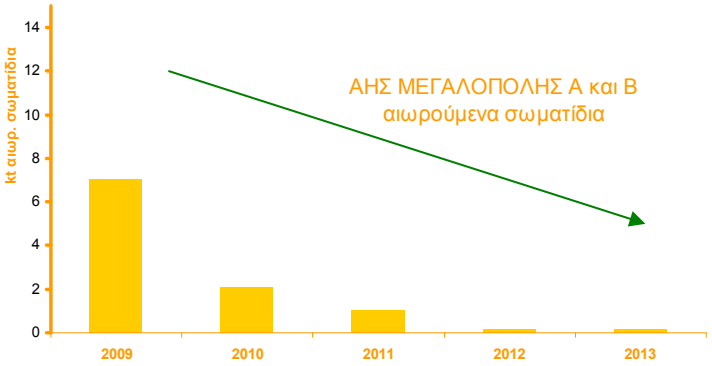


Chart 1: Reduction in particles emission at Agios Dimitrios SES

The installation and operation of flue gas desulphurization system at Megalopolis A' SES Unit III, of 83 million euros contract price, together with the improved operation of the desulphurization system at Megalopolis B' SES Unit V, in combination with the shutdown of Megalopolis A' SES Units I and II (2011), resulted, on the one hand, in the reduction in sulphur dioxide emissions (SO_2) by 99,2% compared to 2007 and, on the other, in the further reduction in particles emission, as presented in the following charts:





<u>Charts 2 and 3</u>:
Reduction in SO2 and in particles emission at Megalopolis SES

The dramatic improvement of the quality of atmospheric environment in the region of Megalopolis SES is the consequence of the drastic reduction in SO_2 and particles emission.
Moreover, in 2012, the pilot implementation of dry multiple injection flue gas desulphurization process started in 2012 at Agios Dimitrios SES Unit III and a preliminary study has been commissioned to a specialized company regarding the reduction in SO_2 emissions in lignite-fired Units in Western Macedonia (Agios Dimitrios SES Units I-IV and Amindeo SES Units I-II).

With the above mentioned projects, DEH facilities and the country fully comply with the provisions of the National Emission Reduction Plan (NERP – approval by virtue of Joint Ministerial Decision 33437/1904/E103, O.G. B' 1634/14.08.2008), as provided for by Directive 2001/80/EC.

Moreover, pursuant to Directive IPPC, the new Environmental Conditions Approval Decisions have been issued concerning Amindeo, Kardia, Ptolemaida and LIPTOL SES and the Lignite Center of Western Macedonia (November 2011).

3. Compliance with the new environmental legislation on industrial emissions (Directive 2010/75/EC)

To comply with the provisions of the new environmental legislation, in December 2012, Greece prepared the Transitional National Emission Reduction (TNERP) and sent it for approval by the EU, pursuant to article 32 of the New Directive 2010/75/EU. The TNERP was approved by the E.U. on the 26th of November 2013. In December 2013, DEH filed an application to the Ministry of Environment concerning certain limited changes to the TNERP. After the Ministry accepted the proposed changes, the revised TNERP was sent again to the EU for approval on the 18th of March 2014. The SES of Agios Dimitrios, Meliti, Megalopoli A' and B' were included in the **revised TNERP,** while the following projects have been planned:

- Construction of a flue gas desulphurization system at Agios Dimitrios SES Unit V where wet FGD method will be applied utilizing limestone forced oxidation at an absorption tower.
- Implementation of dry multiple injection flue gas desulphurization process at Agios Dimitrios SES Units I-IV.
- Reduction in NO_x emissions by applying extensive primary measures (interventions in the fuel preparation system, replacing burners, interventions in the distribution of combustion air in the boiler) at Agios Dimitrios SES Units I-IV and limited primary measures (without replacing burners) at Agios Dimitrios SES Unit V, Megalopolis A' SES Unit III, Megalopolis B' SES Unit IV and Melitis SES.

Moreover, pursuant to article 33 of Directive 2010/75/EC, Kardia SES Units I-IV and Amindeo SES Units I-II were set at limited life time derogation (operate for not more than 17.500 hours from 01.01.2016 up to 31.12.2023).

4. Certified Environmental Management Systems in accordance with ISO 14001:2004 and OHSAS 18001:2007

DEH has certified Environmental Management Systems in accordance with ISO 14001:2004 at the Lignite Center in Western Macedonia and the following Stations, that generate 86% (2013) of DEH electricity output: SES of Komotini, Meliti, Amindeo, Kardia, Agios Dimitrios, Lavrio, Megalopolis A' and B' Chania, Atherinolakos as well as the HPPs of Nestos, Platanovrisi, Pournari I and II, Piges Aoou, Polifitou, Sfikia and Asomaton, Agra and Edesseou, Kremaston, Kastrakiou and Stratou I and Ladona.
DEH has certified Management Systems for Health and Safety at Work in accordance with OHSAS 18001:2007 at Komotini, Meliti, Agios Dimitrios, Megalopoli B, Chania and Atherinolakos SES.
In October 2013 a Contract was signed for the development of Management Systems for Health and Safety at Work at Amindeo, Kardia, Aliveri, Megalopoli A and Soroni at Rhodes Island SES.
Finally, it has to be noted that in December 2012, DEH was awarded the 1st prize for Organization and Management during the «Greek Business Awards for the Environment 2011-2012» event by the European Commission. DEH was awarded for its environmental performance and in particular for the Development, Implementation and Certification of Environmental Management Systems at its thermal and Hydro Power Plants, in accordance with ISO 14001:2004.

On the inspections, the legal framework applied and the penalties and fines imposed, the following is being observed:

It is noted that the Northern and Southern Greece Mines Inspectorates apply a unified policy on the rational exploitation of lignite and in general the mineral wealth of the country, carrying inspections of rational exploitation, as well as the hygiene and safety conditions of the workers and the local residents by giving detailed instructions and orders, in cooperation with the employees' representatives, for the implementation of the provisions of the Mining and Quarrying Works Regulation.
It is also being noted that the New Regulation of Mining and Quarrying Works has been approved[8].
It should be noted that the legislation of the Ministry of Labour, Social Security and Welfare regarding the hygiene and safety at work applies also on the enterprises of mines and quarries as prescribed in the article 1 of the P.D 17/96.
To what concerns the airborne dust and particles at the exploitation and utilization of lignite, according to the provisions of the Mining and Quarrying Works Regulation as well as the Decisions of Environmental Terms Approval, the following should be implemented:

- The transport of lignite by trucks which would be covered for avoidance of airborne dust should be obligatory. Also, the lignite mines' roads should be systematically sprayed with water.
- The conveyors transporting ash from the Thermal Power Stations (TPS) to the lignite mines must be imperatively covered in order to avoid the air pollution with dust and particles and in general the Regulation of Mining and Quarrying Works should be observed, especially to what concerns the prohibition of spreading dust on the roads.
- To what concerns the restitution of the environment from the lignite exploitation, this should be made immediately in the exhausted lignite mines so as to prevent its self-ignition, which would result in the aggravation of the atmosphere with dangerous dirt. For these reasons, the time for the environment's restitution should be significantly reduced.

With regard to inspections at DEH units, we would like to inform you that the Hellenic Environmental Inspectorate (HEI) conducted **inspections** at DEH units mentioned below for which the relevant Infringement Certificates and administrative penalties (fines) following HEI's proposal, have either been imposed or are under review:

A/A	Activity	Date of examination/inspection	Imposed/proposed fine
1	DEH SA/Megalopolis A΄ SES	22-11-2011 & 20-07-2012	51.750 Euro
2	DEH SA/Megalopolis B΄ SES	22-11-2011 & 20-07-2012	14.450 Euro
3	DEH SA /South Field Mine/Ptolemaida	13-10-2011	Proposal for a fine to be issued
4	DEH SA/Megalopolis A΄ SES	24-11-2009	449.100 Euro
5.	DEH SA /Samos production plant/Independent	24-08-2009	HEI proposed to the Prefect concerned a fine

[8] By the D7/A/oik.12050/23.05.2011 (Gov.Gaz. B/1227) Decision of the Ministry of Environment

			of 9.900 euros

From the above mentioned inspections with regard to gaseous emissions:

(a) In the first case an infringement has been confirmed for exceeding sulphur dioxide emission limit values.

(b) In the second case an infringement has been confirmed for exceeding sulphur dioxide emission limit values, and for liquid ash outdoor storage.

(c) In the third case no infringements have been confirmed concerning particles emission.

(d) In the fourth case four infringements have been confirmed for gases and particles emissions.

(e) In the fifth case one infringement has been confirmed for gaseous emissions.

Finally, with regard to **HEI staffing**, we would like to inform you that during 2010 a total number of 36 environmental inspectors were employed at HEI while today their number is reduced to 26 employees, 2 of whom have been seconded to other units.

Furthermore, the establishment of private environmental inspectors register is promoted in accordance with article 20, para.5 of Act N. 4014/2011 (O.G. 209 A΄) by means of drafting a Presidential Decree in accordance with the provisions of article 20, para.18 of Act No. 4014/2011.

ARTICLE 12 – DROIT TO SOCIAL SECURITY

Article 12§1 - Existence of a social security system

ESC 12§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§1 of the Charter on the grounds that:

- *the minimum level of old age benefit is manifestly inadequate;*
- *the minimum level of unemployment benefit is manifestly inadequate;*
- *the minimum level of sickness benefit is manifestly inadequate.*

First ground of non-conformity

31. The representative of the Czech Republic stated that the figures quoted from MISSOC in the conclusion were not accurate (the authorities had in fact suggested to delete this information from the MISSOC database). The minimum level of the old age benefit was not determined by law. The law only provided for a minimum percentage amount of CZK 770 which applied until 1995 (as a bonus to married women/housewifes who did not obtain the required insurance period for old-age pension). In 1996 this category was cancelled by the Pension Insurance Act, and since then pensions had been indexed many times increasing their original level several fold. The number of pensioners receiving lower pensions (below CZK 3 500) was only 0.6 % of pensioners. She also explained that the Czech pension scheme depended on premiums paid, and persons not reaching a sufficient level could supplement the pension with non-contributory social benefits and assistance. She also underlined that the Czech social security system was in compliance with ILO Convention 102.

32. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Second ground of non-conformity

33. The representative of the Czech Republic stated that the increase of the minimum wage had resulted in an increase in the amount of the unemployment benefit (the percentage of calculation remained the same). The main objective of the unemployment benefit was to motivate people to work, and not rely totally or mostly on financial benefits. The system did not operate on the notion of a minimum benefit. Moreover, the number of jobseekers which received the minimum level of the unemployment benefit was said to be negligible (as only around 2% of all employess receive minimum wage). The representative of the Czech Republic also mentioned that her country was in conformity with the requirements of the European Code of Social Security.

34. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Third ground of non-conformity

35. Additional information is to be provided in the next National Report.

ESC 12§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of unemployment benefit for beneficiaries without dependents is manifestly inadequate.

Ground of non-conformity

36. The representative of Greece underlined the difficult financial situation the country was going through, with an economic adjustment programme and loan contract, as well as fiscal and structural measures to enhance the economy and improve the labour market. As regards the unemployment benefit, the basic level was fixed at 55% of the daily wage of an unskilled worker. As for the amounts, as of February 2012 it had been provided that the minimum monthly and daily wage limits of the National General Collective Labor Agreement would be reduced by 22%. Subsequently, the minimum daily wage of an unskilled worker was now €26,18 and the amount of the basic unemployment allowance was re-adjusted at €14,40 per day and €360,00 per month.

37. The representative of Greece also explained some new measures for vulnerable social groups, including a long-term unemployment benefit, for persons 20 to 66 years who had exhausted their right to the ordinary unemployment benefit.

38. The GC took note of the information provided and decided to await the next assessment of the ECSR.

ESC 12§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 12§1 of the 1961 Charter on the ground that the minimum level of unemployment benefit is inadequate.

Ground of non-conformity

39. The representative of Poland recalled that her Government had fundamental doubts on the appropriateness of the interpretation applied by the ECSR to assess situations under this provision, and considered that adequacy of benefits should not be assessed under Article 12§1 but rather under 12§2. The reasons and assessment criteria which the ECSR had started to apply in 2004 in respect of this provision had never been explained by the latter. In fact, the ECSR had never given any reply to the interpretation of Article 12§1 as given by Poland in the national report. Likewise, proposals made in this respect by the GC had not been addressed by the ECSR either.

40. As regards the actual conclusion, she considered there were some inconsistencies in the calculation method, given that the 50% median equivalised income figure was of 2011, whereas the amount of the unemployment benefit quoted was of 2010. The representative of Poland also mentioned that unemployment benefits were indexed every year by 3% to 4%, and that the difficult economic context in the country did not enable any other increases in respect of this benefit. The Government's emphasis was put on active labour market measures, rather than increasing the level of the unemployment benefit, as the latter could even have the adverse effect of leading people to remain inactive. Changes to the situation were therefore not foreseen.

41. The representative of Turkey proposed that a strong message be sent to Poland, as it did not intend changing the situation. The proposal was not backed, the representatives of several countries did not consider it appropriate to single out one country only, as many others were also found not in compliance with this provision.

42. The GC took note of the information provided and decided to await the next assessment of the ECSR.

ESC 12§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of sickness benefit is manifestly inadequate.

43. The representative of Spain provided the following information in writing:

A. Le Comité conclut que l'Espagne n'est pas en conformité avec ce qui est établi dans l'article 12.1 de la Charte, en ce qui concerne la **prestation économique pour incapacité temporaire découlant de maladie.** Le Comité considère que le montant moyen qui est touché par cette prestation est en dessous du 40% du revenu moyen des salaires (estimé sur les données économiques d'Eurostat) et qui, par conséquent, est insuffisant.

Dans le quatrième paragraphe on fait référence aux montants des prestations pour incapacité temporaire (IT) obtenus à partir du salaire moyen d'un travailleur manuel, en arrivant à la conclusion que ces montants sont inférieurs au 50% des revenus moyens. Conformément aux montants mentionnés (32 euros du 1er au 20ème jour et de 40 euros, du 21ème au 30ème jour), le montant de la prestation pour IT serait de 1.040 euros par mois.

Dans son analyse, le Comité part du montant de l'IPREM (indicateur public des revenus d'effets multiples) prévu dans la Loi 39/2010, du 22 décembre, du Budget de l'État pour l'année 2011, qui est fixé en 7.455,14 euros annuels, et sur ce montant évalue le 60% (4.473 euros annuels).

À la suite de cette interprétation, le Comité établit, comme limite de la prestation pour incapacité temporaire, l'IPREM (60% équivalent à 4.473 euros par an).

En ce qui concerne cette interprétation comme règle générale et **pour l'hypothèse que le fait générateur soit une éventualité commune,** l'assiette régulatrice de la prestation pour incapacité temporaire est le résultat de diviser la base de cotisation du travailleur du mois précédent à la date du commencement de l'incapacité, entre le nombre de jours concernant cette cotisation (dans le cas de salaire mensuel, 30).

On offre, ci-après, les montants par jour en vigueur dans l'année 2011 de l'IPREM, le salaire moyen du Régime Général et la prestation qui pour incapacité temporaire correspond à ce salaire moyen, depuis le 1er au 20ème jour (60%) et à partir du 21ème jour (75%) :

ANNÉE	IPREM	Salaire Moyen	I.T. 60%	I.T. 75%
2011	17,75	56,44	33,866	42,333

Il y a, en outre, un montant de bases minimales de cotisation pour chacun des groupes de catégories professionnelles qui est recueilli tous les ans dans le correspondant Arrêté de développement des règles de cotisation à la Sécurité Sociale, Chômage, Fonds de Garantie Salariale et Formation Professionnelle ; concrètement, pour l'année 2011, la base minimale de cotisation oscille entre 1.045,20 et 748,20 euros par mois (Arrêté TIN/41/2011, du 18 janvier).

Le Comité conclut que la situation de l'Espagne n'est pas en conformité avec l'article 12.1 de la Charte Sociale Européenne, sur la base que le montant minimum de prestation pour maladie est manifestement insuffisant. En ce qui concerne cette affirmation, on réitère que la prestation pour incapacité temporaire n'est pas soumise à aucun minimum lié à l'IPREM et que le pourcentage de la prestation est du 60% et le 75%, qui est appliqué à l'assiette régulatrice correspondante, qui au moins sera le salaire minimum interprofessionnel.

B. De même, le Comité demande le **montant minimum des prestations pour invalidité et maternité.**

a) En ce qui concerne la prestation pour maternité, le montant de celle-ci est établi à partir de la base de cotisation de la travailleuse qui, au moins, est le salaire minimum interprofessionnel (dont le montant est supérieur à l'IPREM).

Dans le cas où la travailleuse ne réunirait pas la période minimale de cotisation exigée, elle touchera une allocation non contributive de maternité pour un montant du 100% de l'IPREM.

Ce sont des situations protégées la maternité, l'adoption et l'accueil tant préadoptif que permanent ou simple, conformément au Code Civil ou les lois civiles des Communautés Autonomes qui règlent cette question, à la condition que dans ce dernier cas sa durée ne soit pas inférieure à une année, et même si ces accueils sont provisoires, pendant les périodes de repos que pour ces situations jouissent légalement les travailleurs.

b) En ce qui concerne les montants minimums de la pension d'incapacité permanente, adaptés à l'écart annuel de l'inflation, sont les suivants pour la période considérée (2008-2011) :

MONTANT ANNUEL DES PENSIONS MINIMALES D'INCAPACITÉ PERMANENTE[9]

2008-2011

Type de pension	2008		2009			2010			2011		
	Avec Conjoint à charge	Sans Conjoint à charge	Avec Conjoint à charge	Sans Conjoint à charge	Avec Conjoint à charge	Avec Conjoint à charge	Sans Conjoint à charge	Avec Conjoint à charge	Avec Conjoint à charge	Sans Conjoint à charge	Avec Conjoint à charge
Incapacité permanente											
Grande invalidité	13.888,14	11.143,30	14.620,06	11.792,62	11.477,62	15.426,60	12.503,40	11.859,40	15.876,00	12.867,40	12.203,80
Absolue et totale avec 65 ans	9.258,76	7.428,82	9.746,66	7.861,70	7.651,70	10.284,40	8.335,60	7.905,80	10.584,00	8.577,80	8.135,40
Totale: Avec un âge entre 60 et 64 ans	8.653,12	6.922,16	9.122,82	7.339,92	7.129,92	9.639,00	7.796,60	7.366,80	9.919,00	8.023,40	7.581,00
Totale: Découlant de maladie commune < de 60 ans											
Partielle du régime d'Accident du travail : Titulaire avec 65 ans :			5.014,80	5.014,80	(*)	5.182,80	5.182,80	4.876,76	5.334,00	5.334,00	4.938,08
Titulaire avec 65 ans	9.258,76	7.428,82	9.746,66	7.861,70	7.651,70	10.284,40	8.335,60	7.905,80	10.584,00	8.577,80	8.135,40

(*) 55% de la base minimale de cotisation du Régime Général.

Les prestations d'incapacité permanente consistent à une indemnité ou pension, en fonction du degré d'incapacité permanente reconnu. L'indemnité à forfait, qui est octroyé dans le cas d'incapacité permanente partielle, consiste en 24 mensualités de la même assiette régulatrice de l'incapacité temporaire.

Pour déterminer le montant des pensions, on applique un pourcentage sur l'assiette régulatrice calculée, qui varie selon le degré d'incapacité ; lorsqu'il s'agit de pensions d'incapacité permanente totale, correspond le 55% de l'assiette régulatrice (ou le 75%, lorsque certaines circonstances personnelles et professionnelles du travailleur sont données) ; le 100 pour 100, dans les pensions d'incapacité permanente absolue et, le 100 pour 100 de l'assiette régulatrice plus un complément, dans les pensions de grande invalidité.

Le calcul de l'assiette régulatrice est différent, dans ces prestations, selon soit l'éventualité déterminante de l'incapacité (maladie commune ou professionnelle, accident du travail ou accident non du travail) et la situation (d'existence ou non) dans laquelle se trouve l'intéressé, mais il est toujours effectué sur les bases de cotisation du travailleur pendant une certaine période de temps ou sur son salaire réel, si ces prestations découlent d'une éventualité professionnelle.

Ainsi, il convient de préciser que dans notre système, comme règle générale, est la base de cotisation constituée par la rémunération totale du travailleur, l'axe pour déterminer le montant des prestations économiques de modalité contributive.

ESC 12§1 « THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA »

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 12§1 of the Charter on the ground that the minimum duration of unemployment benefit is too short.

44. The representative of "the former Yugoslav Republic of Macedonia" provided the following information in writing:

As it was previously explained in our Report, the right on the unemployment benefit (UB), is one of the rights of the unemployed persons in the Republic of Macedonia and it depends on the time period during which the unemployed person was included in the social insurance system, i.e. the person was employed.

Having into consideration the unfavourable situation in the country concerning the unemployment, in the past period and in cooperation with the international institutions and organizations including the World Bank, analyses and assessments have been made resulting in several recommendations for undertaking measures that will improve the situation and in the same time, will discourage the unemployed persons to remain a longer time period in the records of the employment services.

In this respect, in addition to the significant shift of the focus from the passive towards the active labour market measures and the commencement with preparation and implementation of comprehensive and detailed Annual Operational plans on active labour market programmes and measures, a subject of the analyses and discussions was also the redesign of the existing system of granting the unemployment benefit.
Thus, with the legal amendments from April 2006, a changes have been made concerning the time period of receiving the financial benefit in case of unemployment, wherein the minimum period of exercising the right to such compensation was specified to one month (for person that were employed for 9 consecutive months or 12 months with interruptions during the last 18 months).

It is important to mention that when defining the time periods of receiving this right, it was taken into consideration to establish a proportional relation between the minimum and maximum periods of exercising the right to unemployment benefit.
It was considered that such a measure is stimulative and that, together with the many other various existing active labour market measures, it will contribute for the unemployed persons to seek job more actively and intensively and to find employment. Of course, the unemployment beneficiaries are also benefiting from the various existing active labour market measures.

We do believe that all the measure that were and are being implemented in this field, are giving the positive effect and are contributing to the evident improvements in respect to the situation with the unemployment and the registered unemployed persons.

We would also like to note that, pursuant to the data obtained from the Employment Service Agency of the Republic of Macedonia, the number of persons using the unemployment benefit with a minimal defined duration of one month is relatively small in relation to the total number of beneficiaries of this right.
As it could be noticed from the presented table, the number of unemployed persons using the unemployment benefit in duration of 1 month in the last 3.5 years is rather small and it varies from 0.1% up to 0.9% of the total number of beneficiaries in the specific month of the year.
In average, this monthly number of minimum-duration UB users per year is 0.39% of all UB beneficiaries for 2011; 0.48% for 2012; 0.53% for 2013 and 0.48% for the first eight months of this year (2014).
In absolute figures, the average monthly number of these beneficiaries is from to 94 in 2011 to 73 for the period Jan-Aug 2014.

Table: *Total number of unemployment beneficiaries and the beneficiaries that acquired the right of unemployment benefit (UB) in the duration of 1 month:*

	2011			2012			2013			2014		
	Total num. of UB bene-ficiaries	UB = 1 month	%	Total num. of UB bene-ficiaries	UB = 1 month	%	Total num. of UB bene-ficiaries	UB = 1 month	%	Total num. of UB bene-ficiaries	UB = 1 month	%
jan.	24,023	115	**0.5%**	25,701	96	**0.4%**	21,761	129	**0.6%**	17,729	106	**0.6%**
fev.	24,759	75	**0.3%**	26,062	92	**0.4%**	21,780	107	**0.5%**	17,250	77	**0.4%**
mar.	24,437	80	**0.3%**	25,162	132	**0.5%**	20,824	100	**0.5%**	15,935	81	**0.5%**
apr.	24,302	62	**0.3%**	24,511	90	**0.4%**	20,419	95	**0.5%**	14,985	52	**0.3%**
may	23,836	33	**0.1%**	23,702	74	**0.3%**	19,428	101	**0.5%**	14,695	42	**0.3%**
jun.	23,779	37	**0.2%**	23,521	91	**0.4%**	19,227	104	**0.5%**	14,318	57	**0.4%**
jul.	23,725	49	**0.2%**	23,208	123	**0.5%**	19,298	90	**0.5%**	13,709	82	**0.6%**
aug.	24,182	59	**0.2%**	23,000	101	**0.4%**	18,360	72	**0.4%**	13,649	88	**0.6%**
sep.	23,678	70	**0.3%**	22,211	143	**0.6%**	18,263	119	**0.7%**			
oct.	24,079	115	**0.5%**	22,313	138	**0.6%**	17,843	132	**0.7%**			
nov.	24,265	228	**0.9%**	21,967	143	**0.7%**	18,088	106	**0.6%**			
dec.	25,486	203	**0.8%**	21,727	135	**0.6%**	17,476	84	**0.5%**			
AVG.	**24,213**	**94**	**0.39%**	**23,590**	**113**	**0.48%**	**19,397**	**103**	**0.53%**	**15,284**	**73**	**0.48%**

Source: Employment Service Agency of the Republic of Macedonia

As regards this issue, in the forthcoming period an additional analyses and assessments will be made in relation to the adequacy and effects of this measure, as well as the relevant financial effects and implication of possible changes, whereupon adequate solutions will be proposed and implemented.

ESC 12§1 UNITED KINGDOM (amended)

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 12§1 of the Charter on the ground that:

- *the minimum level of state pension is manifestly inadequate;*

Grounds of non-conformity

45. The representative of the United Kingdom stated that his Government did not share the view of the ECSR on the perceived manifest inadequacy of the Jobseeker's Allowance**,** **Incapacity Benefit** and the State Pension. The ECSR has looked at the personal flat rate of

these benefits in isolation, without taking into account additional amounts payable or a range of income related benefits also available.

46. As regards the Jobseeker's Allowance, **Incapacity Benefit/Employment and Support Allowance**, he mentioned that the UK system provided additional support for costs related to age, disability and caring. Moreover, help towards rent (through Housing Benefit) and Council Tax support, Support for Mortgage Interest could also be provided. Those who received income-based benefits received free health care, and full help with costs towards, for example, free dental treatment, free prescriptions etc. When these supplements were taken into account, the amount received by beneficiaries was above the 50% median equivalised income threshold used by the ECSR.

47. As regards the State Pension, the representative of the United Kingdom indicated that there existed a Pension Credit which was an income-related safety-net benefit that topped up income to a standard minimum of £148.35 a week for single pensioners and £226.50 a week for couples. Those with severe disability, caring responsibilities and/or qualifying housing costs could be entitled to extra amounts. The Government had also protected key benefits for older people including: free eye tests; free National Health Service prescriptions; free bus passes; free television licences, for those aged 75 and over, and Winter Fuel Payments.

48. The GC took note of the information provided and decided to await the next assessment of the ECSR.

ESC 12§3 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 12§3 of the Charter due to the restrictive evolution of the social security system.

First ground of non-conformity

49. The representative from Greece said that the structural measures taken by the State aimed at dealing with the structural problems in the labour market and the social security system, whose sustainability was threatened by the decline in contributions due to the increasing unemployment and demographic problem of the country. In particular, by the adoption of Law 3863/2010, the pension system was streamlined in order to ensure its sustainability; special attention has been given to the law-income pensioners and the elderly who have insufficient income. Uniform insurance rules were established for all insured persons and new social security institutions were set up by the fund merger or integration of bodies and branches in existing social security organisations. The process of the legislative and institutional reform is ongoing.

50. Furthermore, the representative from Greece confirmed that the five collective complaints lodged against Greece were mainly related to actions taken in the context of the reform of the social security system, in particular measures having the effect of reducing pensions and benefits in both the private and public sector. The subject matter of the complaints is the same but lodged by five different trade unions. Regarding the present status of the collective complaints procedure, the representative from Greece informed that the GR-SOC suggested the adoption of a resolution by the Committee of Ministers; the drafting of the relevant resolution is pending.

51. The representative from Greece also informed that, as regards new measures to reform the pension system, in 2012 the program “Home car for pensioners” was established with the purpose to ensure independent living conditions for the elderly and disabled pensioners in their homes by organising and providing relevant services. In 2013, new legislation introduced measures against fraud and error, and the evasion of social security contributions. The pension of all uninsured elderly people who do not receive pension from any other social security institution continues to be provided, on condition that they have been legally residing in Greece for twenty years and meet the annual and family income criteria.

52. The GC took note of the information provided by the representative from Greece and will monitor the situation through the collective complaints procedure.

Second ground of non-confomity

53. Additional information is to be provided in the next National Report.

ESC 12§3 POLOGNE

The Committee concludes that the situation in Poland is not in conformity with Article 12§3 of the 1961 Charter because of the restrictive evolution of unemployment branch of social security.

54. The representative of Poland provided the following information in writing:

Quant à la critique que la période de versement de l'allocation de chômage a été réduite de 18 à 12 ou 6 mois, il faut noter que la situation économique de l'Etat, et en particulier la situation du Fonds du Travail, qui finance les allocations de chômage ainsi que vu que la procédure obligatoire du déficit excessif est appliquée envers la Pologne, rendent impossible - à l'heure actuelle – le prolongement de la période pendant laquelle cette allocation est versée.

Conformément à la loi du 20 avril 2004 sur la promotion de l'emploi et les institutions du marché du travail, l'allocation est versée pendant 6 ou 12 mois. La période de versement de l'allocation dépend du taux de chômage dans le powiat dans lequel réside la personne sans emploi. Si, au 30 juin de l'année qui précède le jour à compter duquel la personne sans emploi a droit à l'allocation, le taux de chômage dépassait 150% du taux de chômage moyen en Pologne, l'allocation est versée pendant 12 mois.

Le législateur a également instauré le droit à l'allocation pendant 12 mois pour certains groupes particuliers de chômeurs :

- les personnes âgées de plus de 50 ans et ayant cotisé pendant au moins 20 ans, ou
- celles, qui ont à leur charge au moins un enfant de moins de 15 ans, et dont le conjoint est également sans emploi et n'a plus droit à l’allocation de chômage, à la suite de l'expiration de la période, pendant laquelle il y avait droit.

L'allocation de chômage est également versée pendant une période prolongée à une femme ayant accouché pendant la période, où elle avait droit à cette allocation ou bien dans les 30 jours à compter du jour, où elle a perdu le droit à l'allocation de chômage. Dans ce cas, elle garde le droit à l'allocation de chômage pendant la période, qui correspond, en vertu d'autres régulations, au droit à l'allocation de maternité pendant la durée du congé de maternité, du congé de maternité supplémentaire et du congé parental.

Dans le projet de loi sur l'amendement à la loi sur la promotion de l'emploi et sur les institutions du marché du travail et de certaines autres lois, qui est examiné actuellement (III trimestre de 2014) par la Diète de la République de Pologne, on prévoit verser, pendant 12

mois, une allocation de chômage aux personnes sans emploi, parents uniques d'enfants de moins de 15 ans.

Seulement deux groupes de chômeurs avaient droit à 18 mois d'allocation de chômage:

- ceux, qui, le jour de l'acquisition du droit à l'allocation de chômage et pendant la période qu'ils la touchaient, étaient domiciliés dans le périmètre d'action d'un office de l'emploi de powiat, si au 30 juin de l'année qui précède le jour à partir duquel la personne sans emploi a eu droit à l'allocation, le taux de chômage sur ce territoire était deux fois supérieur au taux de chômage moyen en Pologne, et qui avaient cotisé pendant au moins 20 ans, ce qui leur vaut le droit à l'allocation, ou

– les chômeurs qui avaient à leur charge au moins un enfant de moins de 15 ans, et dont le conjoint, au chômage également, n'avait plus droit à l'allocation de chômage, à expiration de la période, où il y avait droit, survenue au lendemain du jour, où ce chômeur avait acquis le droit à l'allocation.

Les groupes de chômeurs qui avaient jusqu'ici droit à l'allocation de chômage pendant 18 mois, ont désormais droit à l'allocation de chômage pendant 12 mois, et non - comme cela a été affirmé par le Comité d'Experts Indépendants – pendant 6 mois. Il est donc difficile de parler d'une réduction générale de la période, pendant laquelle les personnes sans emploi ont droit à l'allocation de chômage, parce que cette réduction ne se rapporte qu'à certains groupes de chômeurs uniquement.

On ne prévoit pas de prolonger la période de versement de l'allocation en raison de des moyens financiers limités, dont dispose le Fonds du Travail et la nécessité d'augmenter les dépenses pour les allocations si on voulait réaliser ce postulat. L'augmentation des dépenses du Fonds du Travail pour les allocations de chômage irait de paire avec la réduction de moyens nécessaires à la politique active du marché du travail, et donc des moyens financiers qui sont destinés à la réinsertion des chômeurs enregistrés auprès des offices pour l'emploi.

La limitation des moyens financiers pour les formes actives de lutte contre le chômage provoquerait à son tour la dégradation de la situation déjà difficile des personnes sans emploi, qui, une fois expiré leur droit à l'allocation, ne pourraient plus compter sur le financement par le Fonds du Travail des actions en vue de leur réinsertion: stage, formation, emploi subventionné.

Grâce à la formation ou au stage, la personne sans emploi acquiert de nouvelles aptitudes et compétences ou bien une expérience professionnelle, touche une bourse (120% de l'allocation de chômage). Le chômeur dirigé vers un emploi subventionné est rémunéré pour son travail. Ce sont, pour lutter contre le chômage et la stagnation sur le marché de l'emploi, des solutions meilleures que l'augmentation du montant des allocations de chômage.

La mise en place du principe d'une allocation de chômage plus élevée dans les 3 premiers mois et sa réduction dans les mois suivants a pour objectif de motiver les chômeurs à prendre un emploi dès les premier mois après leur enregistrement au chômage. Il faut toutefois noter qu'en mettant en place la dégression du montant de l'allocation, dans les trois premiers mois, son montant initial est plus élevé qu'avant la dégression.

Article 12§4 – Social security of persons moving between States

ESC 12§4 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;*

- *the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.*

First ground of non-conformity

55. The representative of the Czech Republic reported on the progress of negotiations on bilateral agreements with the States Parties referred to by the ECSR in its conclusions. Negotiations with Albania had continued in 2012 and 2013 and had now reached a third round; no agreement would be negotiated with Andorra since none of its inhabitants settled in the Czech Republic; the Armenian Government was not interested in negotiating a bilateral agreement; negotiations had begun with Azerbaijan in 2010; Georgia had failed to respond to a proposal to negotiate an agreement; and an agreement with the Republic of Moldova had been signed and entered into force in 2012. All nationals of other State Parties had the right to family allowances even where there was no bilateral agreement.
56. The representative of Armenia said that her Government had received a draft bilateral agreement which was being examined. The Czech authorities would be informed of its decision as soon as possible.
57. The GC congratulated the Government of the Czech Republic for beginning negotiations for bilateral agreements with all the States concerned.

Second ground of non-conformity

58. Additional information is to be provided in the next National Report.

ESC 12§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *the residence requirement imposed on nationals of states not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive.*

First ground of non-conformity

59. The representative from Denmark said that nationals from other EU member States and the members of their family, irrespective of nationality, are given equal treatment with Danish nationals as regards entitlement to social security, according to the EU regulations in this field. However, Regulation 1231/10 extending Regulation 883/04 does not apply to Denmark.
60. Regarding non-EU States, bilateral or multilateral agreements have to be concluded in order to allow nationals from other States Parties to benefit of social security rights in the same conditions as Danish nationals. Furthermore, the representative from Denmark confirmed that the country has concluded bilateral agreements in this area with a few Council of Europe member states. She added that the principle of reciprocity was required. In recent years Denmark received only one application – from the Republic of Moldova – to enter into a bilateral agreement. However, the government of Denmark considered that such an agreement cannot be concluded because the Republic of Moldova applied for an Association Agreement with the EU and that social security is part of that Agreement.

61. The representative from Denmark confirmed that the government was opened to conclude bilateral agreements with additional countries.
62. In response to a question, the representative of Denmark said that the amount of the retirement pension was based on the number of years lived in the country as far as 1st pillar pensions (not complementary pensions) is concerned.
63. The representative from the United-Kingdom noted that several States Parties have not accepted Art. 12§4; for this reason, equal treatment cannot be assured.
64. The representative from Luxembourg noted that a bilateral agreement was not a solution to ensure equal treatment among nationals of different countries because the nature of benefits varies depending on the content of such an agreement. Therefore, elaboration of a multilateral instrument of coordination and its implementation by the Council of Europe is necessary. The European Code of Social Security cannot be a solution because this treaty is too complicated.
65. The President observed that States are not ready to agree on the elaboration of such an instrument. The advantage is that bilateral agreements may be concluded with states outside the Council of Europe.
66. The GC took note of the information provided by the representative from Denmark, encouraged the government to conclude agreements with additional countries and decided to await the next assessment of the ECSR.

Second ground of non-conformity

67. The representative of Denmark stated that the same rules applied to the second ground of non-conformity.

68. The GC took note of this information and decided to await the next assessment of the ECSR.

Third and fourth grounds of non-conformity

69. Additional information is to be provided in the next National Report.

ESC 12§4 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;*
- *the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.*

First and Third grounds of non-conformity

70. The representative of Germany provided the following information in writing:

Preliminary remarks

The Federal Republic of Germany has had for many years an extremely high and comprehensive standard of social security benefits. Bilateral social security agreements have been concluded with many countries to ensure that their nationals are, to the largest possible extent, treated on an equal footing with German nationals (Australia, Bosnia/Herzegovina, Brazil, Chile, China, India, Israel, Japan, Canada, Korea, Kosovo, Morocco, Macedonia, Montenegro, Serbia, Turkey, Tunisia and the USA).

The following general aspects should be noted with regard to the principles set out in Article 12 (4), letters a and b of the ESC concerning social security benefits to the extent that they are covered by the material scope of the above-mentioned social security agreements: All agreements are based on the principles of equal treatment between the nationals of the Parties and equality of status of their respective territories.

Article 12(4) covers two different situations: Letter a concerns equal treatment between a Party's own nationals and the nationals of other Parties in respect of social security rights and their retention. There is no general obligation to export family benefits for children unless this matter has been regulated differently by bilateral or other agreements.

Letter b concerns i.a. the maintenance of accrued rights under pension law. This is ensured by aggregating German and foreign insurance periods under pension law in accordance with bilateral social security agreements. These agreements are based on the principles of reciprocity, equivalence and financial balance and are concluded only if there is sufficient practical need to regulate this matter. Unilateral measures cannot be considered because of the principle of reciprocity.

Detailed comments on Article 12 (4)

1. Countries which have ratified the European Social Charter or the Revised European Social Charter, are not Members of the EU or of the EEA and with which Germany has not concluded an agreement on social security, were named by the Committee as Albania, Andorra, Armenia, Azerbaijan, Georgia and the Republic of Moldova.

The principle of the retention of accrued benefits demanded by the Committee is safeguarded by aggregating German and foreign insurance periods under pension law in accordance with bilateral agreements. These agreements are based on the principles of reciprocity, equivalence and financial balance and are concluded only if there is sufficient practical need to regulate this matter. The unilateral adoption of a regulation providing for the aggregation of German and foreign insurance periods under German law as demanded by the Committee, cannot be considered by the Federal Government because of the principle of reciprocity.

It should also be emphasized that none of the countries referred to by the Committee has so far informed the Federal Republic of Germany of any wish to enter into negotiations on a bilateral social security agreement. Should this be the case, it would in any event be necessary to examine the social, economic and financial framework conditions for more far-reaching equal treatment between German and foreign nationals than currently applicable.

2. There is no obligation to export family benefits for children, except where nationals of the respective country are entitled to the export of the benefit in a similar situation or where the matter has been regulated differently by a bilateral or other agreement. In the case of child benefit, payment of the benefit (the so-called agreement-specific child benefit - Abkommenskindergeld) is linked to the worker's country of employment. The actual amount of child

benefit depends on the living conditions in the child's country of residence. Under the terms of the German-Turkish Agreement on Social Security, which is known to the Committee, Turkish workers employed in Germany have a right to child benefits for children living in Turkey. Discrimination of Turkish nationals does not occur, as the child benefit paid to German workers for children living in Turkey is in the same way dependent on the living conditions in the children's country of residence.

However, due to the modification of the family benefit system introduced by the 1996 Annual Tax Act, the agreement-specific child benefit is no longer of great imprtance in practice. According to the new legal provisions, either child benefit or the tax allowance for children may be claimed (until 1995, both benefits could be claimed simultaneously, but, taken together, they were normally lower than the tax relief under the new legislation). As a rule, claiming the tax-free allowance is more favourable than the agreement-specific child benefit.

No further bilateral agreements on family benefit payments with countries mentioned by the Committee (Albania, Armenia, Georgia and the Russian Federation) are planned. This is, firstly, because of the very small amount of child benefit paid abroad. Secondly, however, under the new family benefit system, all foreign nationals who are liable for tax in Germany, or are regarded as such, are entitled to the tax-free allowance for children within the annual income tax calculation. This advantage is as a rule greater than the amounts of child benefit paid abroad, so that there is no practical need for regulation by means of an agreement.

3. The German pension insurance is contribution-funded, i.e. all pension rights and pension benefits are, in principle, based on the insurance contributions previously paid by the insured person. Thus, insurance periods abroad for which no contributions were paid into the German pension insurance, are not, in principle, taken into account when pension claims are being examined and pensions are calculated.

However, in accordance with supranational or international agreements, the examination of pension claims may also consider insurance periods abroad (aggregation of German and foreign insurance periods when eligibility is examined).

It is neither German national law nor international agreements concluded by Germany that are applied when foreign insurance periods are taken into account in the calculation of a German pension.

What matters in this respect is that insurance periods and the value of the German pension are calculated on a pro rata basis and that an international pension calculation (pro-rata-temporis method) leads to the same result as a purely national calculation.

Similarly, the application of Regulation (EC) No. 883/2004, which provides for an international calculation of pensions in accordance with the pro-rata-temporis method leads to the result that every member state only pays the pension benefit that corresponds to its own national insurance periods.

<u>Second ground of non-conformity</u>

The representative from Germany stated that his country has had for many years an extremely high and comprehensive standard of social security benefits. Bilateral social security agreements have been concluded with many countries to ensure that their nationals are, to the largest possible extent, treated on an equal footing with German nationals (Australia, Bosnia/Herzegovina, Brazil, Chile, China, India, Israel, Japan, Canada, Korea, Kosovo, Morocco, Macedonia, Montenegro, Serbia, Turkey, Tunisia and the USA). All agreements are

based on the principles of equal treatment between the nationals of the Parties and equality of status of their respective territories. Agreements are concluded only if there is sufficient practical need to regulate a matter.

The representative from Germany furthermore highlighted that none of the countries referred to by the Committee (Albania, Armenia, Georgia and the Russian Federation) has so far informed the Federal Republic of Germany of any wish to enter into negotiations on a bilateral social security agreement. No further bilateral agreements on family benefit payments with these countries are planned. This is because of the very small amount of child benefit paid abroad and bearing in mind the fact that under the new family benefit system, introduced by the 1996 Annual Tax Act, all foreign nationals who are liable for tax in Germany, or are regarded as such, are entitled to the tax-free allowance for children within the annual income tax calculation. This advantage is as a rule more favourable than the amounts of child benefit paid abroad, so that there is no practical need for regulation by means of an agreement.

The representative from the Russian Federation informed that an agreement with Germany was under negotiations but that the matter was very complicated.
The President noted that the European Committee of Social Rights considered all the solutions adopted by countries as regards the additional income to assess conformity of the national situation with the Charter. It is therefore important to list all the measures taken to demonstrate that a bilateral agreement is not necessary.

The Governmental Committee took note of the information provided by the representative from Germany and decided to await the next assessment of the ECSR.

ESC 12§4 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;*
- *the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.*

<u>First ground opf non-conformity</u>

71. The representative of Greece provided the following information in writing:

In Greek law and under the principle of equal treatment, third country nationals, members of their families as well as their survivors legally residing in Greece, enjoy *all insurance rights* just like Greek citizens, even in the absence of Bilateral Social Security Agreement with the country they come from.

The conclusion of Social Security Agreements between Greece and any other third country always contributes to safeguarding the social security rights of the citizens of the contracting parties. In any case, when considering the conclusion of an Agreement, both the number of persons it will apply to as well as the general situation of the country in terms of social security are taken into account. At this point of time, and given the overall fiscal situation in Greece which has an important impact also on Social Security Funds, current circumstances and conditions do not permit the opening of negotiations with countries that have ratified the ESC but are not members of the EU.

Finally, since the better cooperation among member states for the coordination of social security systems with third countries would be beneficial in many ways, the European Commission and the Council have established a working group that will study the content of social security provisions included in the current Association Agreements with third countries (Moroco, Algeria, Tunisia, Israel, FYROM, Montenegro, Albania, San Marino and Turkey).

However, currently there are neither the parameters nor the criteria that will help the European Commission decide when, with which third countries and with what content social security provisions will be included in international agreements between the EU and third countries.

As to the remainder, information already communicated in our previous national report on the said provision still applies.

Second ground of non-conformity

72. The representative from Greece stated that children legally staying in Greece or in another EU Member State had the right to family allowances. No bilateral or multilateral agreements with third countries regulating family provisions have been concluded to date.

73. She informed that recently, Act No. 4254/7.04.2014, on «Measures to support Greek economy relating to the implementation of Act No. 4046/2012 and other provisions» provides that, as from 1.07.2014, employers and workers contributions, which constitute the resources of the distributive family allowances account, are abolished. By abolishing these contributions, the corresponding provisions covered by the relevant resources, i.e. family allowances are abolished.

74. Furthermore, the representative of Greece observed that the situation deteriorated and the ECSR should address this issue in the context of Article 12§1.

75. The GC took note of the information provided by the representative from Greece and decided to await the next assessment of the ECSR.

ESC 12§4 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 12§4 of the 1961Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to family allowances is not guaranteed to nationals of all other States Parties;*
- *the right to retention of accrued benefits is not guaranteed to nationals of all other States Parties;*
- *the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.*

Second ground of non-conformity:

76. The representative from Iceland explained the structure of the Icelandic system of child benefits. She stressed that a highly efficient information system between countries which call upon specific bilateral or multilateral agreements should be established to prevent people receiving benefits in different countries at the same time.

77. In response to the conclusion of non-conformity, the representative from Iceland pointed out that Iceland has a very small administration and cannot negotiate agreements with all countries concerned, especially if these countries show little or no initiative to conclude agreements with Iceland. According to her information, Iceland has not received requests from countries that are Parties to the Social Charter but which are not members of the EEA, to conclude agreements in the field of social assistance.

78. The Governmental Committee took note of the information provided by the representative from Iceland and decided to await the next assessment of the ECSR.

First, Third and Fourth ground of non-confomity :

79. Additional information is to be provided in the next National Report.

ESC 12§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 12§4 of the 1961 Charter on the grounds that it has not been established that:

- *equal treatment with regard to social security rights is guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to family allowances is guaranteed to nationals of all other States Parties.*

First ground of non-conformity

80. Additional information is to be provided in the next National Report.

Second ground of non-confomity

81. The representative of Luxembourg made a preliminary comment on the development of the concept of family allowances. Traditionally, family allowances had been regarded as the right of workers to receive a supplementary social security benefit because they had dependent children. Workers had contributed to the social security system and acquired rights and it was reasonable to expect that benefits would be exported.

82. More recently, family allowances were regarded as a child's personal right and were paid to the person who looked after the child's interests. In this case, family allowances were financed by the state budget, as the idea of the collective responsibility of the community had replaced the idea of a right acquired through work.

83. Depending on which of these two concepts was applied, it was possible to choose a co-ordinating formula in international law which took the greatest account of the distinctive characteristics of national law, namely either:

84. a formula based on the idea of rights accrued in the *country of employment* and the export of rights; or

85. a formula based on the idea of rights accrued in the *country of residence*, with its logical consequence, which was the principle of equal treatment of children and, where appropriate, adding up periods of residence in order to thwart any length of residence requirement provided for in national law.

86. The representative of Luxembourg said that, bearing in mind the specific features of Luxembourg law, the Luxembourg Government was in favour of the formula based on residence.

87. He pointed out that a list of bilateral agreements had been appended to the national report and that Luxembourg had negotiated such agreements with the following Council of Europe member states: Albania (not yet in force), Bosnia and Herzegovina, Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia" and Turkey. Preliminary talks were currently under way to open negotiations with Ukraine and Armenia. The Luxembourg Ministry of Social Security confirmed that it was prepared to negotiate with any Council of Europe member state which so desired.

88. As to the principle of equal treatment, according to which the same rights and duties should be assigned to foreign nationals as to Luxembourg nationals, the representative of Luxembourg confirmed that when it was processing international family benefits claims, the Government respected this principle. A distinction was made between two different *de facto* situations in order to apply an appropriate co-ordinating formula:

89. for the European Union, Regulation 883/2004;
90. in bilateral agreements, the principle that the law of the children's country of residence should apply – a principle that had to be accepted by the partner country in negotiations and was based on reciprocity.

91. Under these circumstances, Luxembourg considered that it respected the principle of equal treatment.

92. The representative of Norway congratulated the representative of Luxembourg for his description of the development of the concept of family allowances and the two related co-ordinating formulas.

93. In reply to a comment by the representative of Turkey, the representative of Luxembourg confirmed that under the bilateral agreement with Turkey, family allowances were based on the idea of rights accrued in the *country of residence*. He added that the export of family benefits should not be regarded as the best formula.

94. The GC took note of the information provided, noted in particular that the Luxembourg Government was prepared to negotiate agreements with other countries and decided to wait for the next assessment by the ECSR.

ESC 12§4 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to access to family benefits is not guaranteed to nationals of all other States Parties;*
- *the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.*

First ground of non-conformity

95. The representative of Poland said that in order for persons to be entitled to family allowances, their child or children had to be resident in Poland. Payment of family allowances was governed by bilateral or multilateral agreements. Poland had recently negotiated agreements with Ukraine (coming into force in January 2014) and the Republic of Moldova

(signed in September 2013, ratification under way). A bilateral agreement was being negotiated with Turkey.

96. The representative of Poland pointed out that agreements had existed since 1958 with Bosnia and Herzegovina and Montenegro (in force; agreement negotiated with Yugoslavia) and since 2006 with the "Former Yugoslav Republic of Macedonia". All these agreements covered family allowances. With respect to the application of the agreements with Ukraine and the Republic of Moldova, Poland had proposed to include family allowances, which was rejected. The agreement under negotiation with Turkey will cover family allowances. As to Albania, Andorra, Armenia, Azerbaijan and Georgia, the authorities of these states had not indicated a need to negotiate agreements. However, Poland was prepared to open negotiations if a need arose. Poland had proposed that the possibility of an agreement with the Russian Federation should be investigated but the Russian authorities had not followed up on the proposal.

97. The GC took note of the information provided by the representative of Poland, highlighting the progress on the negotiation of new bilateral agreements and decided to wait for the next assessment by the ECSR.

Second ground of non-conformity

98. The representative of Poland provided the following information in writing:

[totalisation des périodes de cotisation ou de travail]

Pour procéder à une appréciation de la situation, il est nécessaire de tenir compte du fait, que les travailleurs migrants, et qui prennent actuellement un emploi en Pologne, sont soumis à un nouveau système d'assurances sociales. Les solutions dans le cadre de ce système ne font pas dépendre l'attribution des prestations d'une période de cotisation définie. Il n'est donc pas nécessaire de totaliser des périodes de cotisation pour avoir droit à la prestation.

Le problème de totalisation des périodes dans le cadre d'assurance retraite ne concerne que les travailleurs migrants qui avaient été soumis au système d'assurances sociales antérieur, ainsi que ceux qui appliquent pour les rentes d'invalidité au travail et les rentes de famille. Il faut toutefois mentionner, que pour avoir droit à une rente d'invalidité ou à une rente de famille, il faut faire valoir des périodes de cotisation relativement courtes, et c'est pourquoi les périodes de cotisation dans différents états restent sans réelle importance pour l'obtention des prestations.

Le problème de totalisation des périodes de cotisation peut concerner les personnes couvertes par le régime des assurances sociales des agriculteurs. Pour avoir droit à une pension de retraite des agriculteurs, il faut faire état de 25 années de cotisations, et lorsque l'application est faite par une personne ayant cinq ans de moins que l'âge minimum requis, la période de cotisation à documenter est de 30 ans. Etant donné le nombre très limité d'étrangers, qui sont couverts par le régime des assurances sociales des agriculteurs et plutôt l'émigration que l'immigration en Pologne, l'effort nécessaire pour résoudre le problème de l'inexistence d'un système de totalisation voie d'accords bilatéraux serait dépourvu de raison.

	Nombre d'étrangers assurés	Nombre d'étrangers ayant acquis le droit à la retraite ou à une pension d'invalidité dans les années 2008-2013

Afghanistan	-	13
Albanie	*2*	-
Algérie	1	-
Arménie	*9*	-
Apatrides	1	-
Bélarus	24	3
Chine	2	-
Cuba	1	-
Égypte	1	-
Géorgie	*1*	-
Ile Maurice	1	-
Inde	1	-
Irak	1	-
Jordanie	1	-
Kenya	1	-
Maroc	2	-
Mexique	1	-
Mongolie	2	-
Nigeria	1	-
Philippines	1	-
RSA	1	1
Russie	*19*	4
Taiwan	1	-
Tunisie	2	-
USA	3	-
Ouzbékistan	1	-
Vietnam	4	-

Deuxièmement, l'application pratique du principe de totalisation des périodes de cotisation n'est possible, que lorsque dans les relations entre états il existe un accord à ce sujet. L'application unilatérale, sur base de législation intérieure, du principe de totalisation des périodes de cotisation, reste sans justification, car cela ferait naître un passif financier d'un seul côté seulement. En conséquence, la Pologne, par exemple, serait tenue responsable pour toutes les périodes de cotisation, sans la même garantie de la part des autres états.

Le principe consistant à totaliser les périodes est toujours lié à des coûts proportionnels à charge des institutions d'assurances de l'état ou les cotisations avaient été versées. Quand il n'y a pas d'accord bilatéral, la disposition de la loi intérne, qui ordonnerait d'appliquer le principe de la totalisation aurait pour conséquence que les institutions polonaises seraient toujours obligées de supporter les frais qui résulteraient de ce principe – sans réciprocité de

la part des autres états. Pour cette raison, des accorts bi- ou multilatéraux sont conclus afin d'appliquer le principe de la totalisation des périodes de cotisation.

Les nouveaux accords bilatéraux, qui prévoient la totalisation des périodes de cotisation (système général et agriculteurs):

- Ukraine – entré en vigueur le 1er janvier 2014,
- Moldova – signé le 9 septembre 2013, la procédure de ratification est en cours,
- Turquie - les négociations ont été terminées en 2012, mais il est nécessaire de renégocier les dispositions concernant la protection des données personnelles.

La nécessité de conclure des accords avec l'Albanie, l'Arménie et la Géorgie n'a jamais été signalée par les autorités de ces états, ni par les personnes intéressées qui résident en Pologne ou dans les pays cités, c'est pourquoi l'engagement des négociations n'est pas considéré comme prioritaire. Si un tel besoin apparaît, des études qui serviront de point de départ pour l'ouverture éventuelle des négociations seront engagées.

On ne prévoit pas de cocnlure un accord avec la Fédération Russe – la Pologne a avancé la proposition d'un tel accord, mais elle n'a pas reçu de réponse à ce sujet de la part de la Fédération Russe.

ESC 12§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;*
- *the length of residence requirement for entitlement to non-contributory old-age pensions is excessive.*

99. The representative of Spain pointed out that Spain respected EU regulations in this sphere with regard to nationals of the EU member states. Spanish legislation fully complied with the principle of equal treatment in social security matters with regard to foreigners residing legally in Spain, including the right to family allowances. As to the States Parties to the Social Charter which were not members of the EU, Spain had already negotiated bilateral agreements with some of these and negotiations were under way with the Republic of Moldova, Serbia and Turkey.

100. The GC took note of the information provided by the representative of Spain and decided to wait for the next assessment by the ECSR.

101. *The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the ground that the length of residence requirement for entitlement to non-contributory old-age pensions is excessive.*

102. The representative of Spain stated that under the current rules, to be entitled to an old-age pension, it was necessary to have lived in Spain for ten years between the ages of 16 and 65, which was the retirement age. The total of ten years had to include only two consecutive years immediately preceding the application for a pension.

103. The GC took note of the information provided by the representative of Spain and decided to wait for the next assessment by the ECSR.

ESC 12§4 " THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- *equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;*
- *equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;*
- *it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;*
- *it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.*

First ground of non-conformity

104. The representative from "the former Yugoslav Republic of Macedonia" stated that the coverage with the mandatory social insurance in the Republic of Macedonia is regulated with several legal acts, such as the Law on contributions for mandatory social insurance, Law on pension and disability insurance, Law on health insurance, the Law on employment and insurance in case of unemployment. The granting of the family allowances, i.e. the child benefit is regulated with the Law on child protection. These laws regulate as well, the exercising of the rights from social insurance and the right to child benefit for the foreign nationals legally residing/working of the territory of the State. According to these acts, these foreign nationals are allowed the access to the social security and the child benefits under the same rules and conditions existing for the Macedonian nationals as well, without any restrictions and limitations in this respect.

105. He then explained that the issue of social insurance coverage, exercising of specific rights, the coordination of social security, the issues of accumulation of insurance periods and export of benefits, is in greater details and more precisely regulated by negotiating and concluding bilateral agreements on social security between "the former Yugoslav Republic of Macedonia" and other countries.

106. Furthermore, the representative from "the former Yugoslav Republic of Macedonia" said that the government has strongly expressed its willingness and readiness for improving and widening the bilateral cooperation in the area of social security and for concluding the bilateral agreements. In this respect, the current situation in this field is the following:

107. since the independence of the country, "the former Yugoslav Republic of Macedonia" have already concluded bilateral agreements on social security with 18 countries, and there is also one Agreement on recognizing the insurance periods for pension (with Kosovo*);

108. there are two bilateral agreements (with Hungary and Italy) which are finalised and agreed between the countries and their signing is expected;

109. the negotiations for concluding two bilateral agreements are currently ongoing (with Albania and Slovakia);

110. in the previous period there have been a number of initiatives raised and submitted by "the former Yugoslav Republic of Macedonia" with a number of countries, amongst which, for example with France, Spain, Portugal, Norway, Finland, the Russian Federation, Ukraine, Lithuania, Latvia, Estonia etc.

111. The GC took note of the information provided by the representative from "the former Yugoslav Republic of Macedonia", in particular of the willingness for concluding new bilateral agreements, of the negotiations with Albania and Slovakia, and decided to await the next assessment of the ECSR.

Second ground of non-conformity

112. The representative from "the former Yugoslav Republic of Macedonia" said that the same conditions applied to nationals and foreigners as regards access to family allowances. He added that most of the beneficiaries were from countries with which an agreement has not been concluded, for example Albania.

113. The GC took note of the information provided by the representative from "the former Yugoslav Republic of Macedonia" and decided to await the next assessment of the ECSR.

Third and Fourth grounds of non-conformity

114. The representative of "the former Yugoslav Republic of Macedonia" provided the following information in writing:

In respect to the raised issues regarding both, the right to retain accrued benefits and the right to maintenance of accruing rights of the nationals of other countries, we would like to emphasize the fact that the Macedonian legislation in the field of social security establishes and guarantees equal treatment to all citizens in respect to the acquiring, exercising, retention of their social insurance rights.
The coverage with the mandatory social insurance in the Republic of Macedonia is regulated with several legal acts, such as the Law on contributions for mandatory social insurance, Law on pension and disability insurance, Law on health insurance, the Law on employment and insurance in case of unemployment.

More specifically, the Law on pension and disability insurance and the Law on contributions for mandatory social insurance regulate the mandatory coverage with pension and disability insurance for foreign citizens who are working on the territory of our country and who are coming from the countries with which the Republic of Macedonia does not applies an agreement on social security.

In these cases, these foreign nationals exercise the rights deriving from the pension and disability insurance under the very same rules and conditions existing for the Macedonian nationals as well, without any restrictions and limitations in this respect. This applies also to exercising the rights form pension and disability insurance for the members of the family of the insured person (survivor's pension), as well as to the transfer of cash benefits (pensions).

Of course, the issues of social insurance coverage, exercising of specific rights, coordination of social security, retention and accumulation of rights and benefits, export of benefits etc., are in greater details and more precisely regulated by negotiating and concluding bilateral agreements on social security between Macedonia and other countries.
The negotiation and conclusion of the bilateral agreements on social security is, of course, the two-way, mutual process, where the expressed interest and willingness is needed from the two parties, i.e. the two countries.

As it was already explained on the previous meeting of the Governmental Committee (Strasbourg, 19-23 May 2014), the Republic of Macedonia has achieved significant progress in negotiating and concluding bilateral social security agreements, with around 20 bilateral agreements currently concluded and in force, several are being currently negotiated, and with expressed interest and initiatives for starting negotiation with a number of other countries. The efforts and activities in this field will continue.

However, what is important to be emphasized here once again is that the Macedonian legislation provides access to the mandatory social insurance for foreign citizens even in the cases where there is no bilateral agreement, on the same conditions which apply for domestic citizens and without any special restrictions and limitations.

ATICLE 13 – RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

Article 13§1 - Specific emergency assistance for non-residents

ESC 13§1 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- *it has not been established that means of subsistance are guaranteed to persons in need, whose social assistance is withdrawn as penalty for having refused a job offer;*
- *the level of social assistance is manifestly inadequate;*
- *nationals of other States Parties are subject to an excessive length of residence requirement to be eligible for social assistance.*

First ground of non-conformity

115. The representative from Croatia informed that the new Social Welfare Act (Official Gazette, number 157/13), entered into force on 1 January 2014, introduced certain changes, such as support for the integration of socially excluded people in society and in the labour market, and the possibility of choice of services needed in the process of social integration. Social benefits can be directed to the neediest persons. The Act established a guaranteed minimum benefit which ensures securing of the basic necessities of life of a single person or household who do not have sufficient means to cover their basic necessities of life. The main feature of the guaranteed minimum benefit is the prevention of extreme poverty and maintenance of social integration, namely the prevention of social exclusion, particularly for vulnerable groups in society.

116. Furthermore, the representative from Croatia pointed out that in 2014 the amount of social assistance for single person was 34 % higher than before. She stressed that the professional activation of unemployed beneficiaries who are able to work and computerisation of the social welfare system were the first steps that have been made towards the simplification of the administration which will, with the better targeting of social assistance, contribute to higher social benefits and more efficient management of financial resources for the social protection system.

117. The Governmental Committee took note of the information provided by the representative from Croatia, it considered that the situation was moving in a good direction and decided to await the next assessment of the ECSR.

Second ground of non-conformity

118. The representative from Croatia informed that rights of foreigners and stateless persons in the social welfare system has been regulated by Article 22 of the Social Welfare

Act mentioned above. Under this Article, the following persons have rights in the social welfare system:

119. a foreigner and stateless person with permanent residence in the Republic of Croatia;
120. (2) a foreigner under subsidiary protection, a foreigner with the status of victim of trafficking, granted asylum and their families with legal residence in the Republic of Croatia;
121. (3) In exceptional cases, a person not covered by paragraphs 1 and 2 of this Article may exercise the right to a one-time assistance and temporary accommodation under the conditions prescribed by this Act, if their living circumstances so require.

122. The Social Welfare Act is silent as regards the length of residence requirement which is regulated by the Foreigners Act (Official Gazette, consolidated version of the Act, 130/11, 74/13) and the Asylum Act (Asylum Act, consolidated version of the Act, 79/07, 88/10, 143/13).
123. Following a question from the representative of the ETUC, the representative from Croatia were invited to provide information on the length of residence required to be eligible for social assistance preferably by the end of the meeting. This information was not received by the Governmental Committee within the time limit set.

ESC 13§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- *it has not been established that the level of social assistance is adequate and*
- *Czech legislation allows withdrawal of residence permit to foreign nationals in material need.*

First ground of non-conformity

124. Additional information is to be provided in the next National Report.

Second ground of non conformity

125. The representative of the Czech Republic said that the Social Security Act, N° 100/1988, which provided for the process of examination as to whether a person applying for social or other benefit may be an unreasonable burden on the social assistance system, was repealed on 14 November 2011. Since then, as stipulated under the Assistance in Material Need Act, N° 111/2006, section 5, subsection 1(c) and as the Czech Republic had mentioned in the past, people entitled to draw benefits from the social security system were those residing in the territory of the Czech Republic both legally or illegally, if it was guaranteed by an international agreement, such as the Charter. The Act thus guaranteed effective assistance was provided to all non-resident foreign nationals of other State Parties and the Czech legislation had been brought into conformity with the requirements of the 1961 Charter.

126. The GC took note of the modification in the legislation, congratulated the government for this progress and decided to await the next assessment of the ECSR.

ESC 13§1 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the 1961 Charter on the following grounds:

- *the level of the ordinary social assistance allowance (kontanthjælp) paid to persons under 25 years of age is not adequate,*
- *the level of starting allowance (starthjælp) paid to persons both under and over 25 years of age was not adequate during the reference period;*
- *nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark may have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years.*

First ground of non-conformity

127. The representative of Denmark said that an Expert Committee, formed by the Government in May 2012, had examined different methods to calculate poverty and developed proposals for a Danish poverty threshold, with the aim of identifying vulnerable groups. Poverty was considered as a normative concept and a matter of long term limited opportunities to participate in social life as a result of a relatively low income. The Expert Committee's recommendation for an economic poverty threshold was based on an income level and a fortune level. A person was below the threshold, if he or she for 3 consecutive years had an income below 50 per cent of median income and did not have a fortune of 100,000 kr. (pr. adult), i.e. 13.300 Euros. Groups of people with sustained economic resources were identified and students were not included in the group of financially poor as their situation was temporary. The 50 per cent of median income was measured per year and was only relevant if a person received social assistance for a year and received no further assistance, such as housing benefit. Moreover, it should be noted that medical care and education were free in Denmark and housing subsidies were generally high. The political task was to ensure that young people left the social assistance scheme and received education, with clear requirements to improve opportunities for accessing the labour market. Beneficiaries within the level of the above-mentioned allowances would, as a minimum, be guaranteed benefits corresponding to the level granted to students. Social benefits for young people of ordinary training/education age were not to exceed the level of the education allowance. Using the "risk of poverty threshold" would mean a rise in the allowance of up to 50 per cent if a person gave up education and received social assistance instead. The Government, therefore, considered the levels of the above-mentioned allowances to be politically appropriate. Concerning the Starting Allowance, this had been abolished in 2011 with effect from 1 January 2012.

128. The Chair welcomed the fact that the situation had been seriously examined through the setting up of an Expert Committee.

129. The representative of Belgium mentioned that a package of measures existed in the context of encouraging individual responsibility and referred to politically sensitive debates in Europe concerning such issues.

130. The representative of the ETUC asked about the practical and financial implications concerning the removal of the starting allowance for young people.

131. The representative of Denmark said that the financial implication was an increase in public expenditure and the practical implication was that people who had previously received the starting allowance currently received ordinary social assistance in the same way as other people in the same age bracket.

132. The GC took note of the situation and decided to await the next assessment of the ECSR.

Second ground of non-conformity

133. Additional information is to be provided in the next National Report.

Third ground of non-conformity

134. The representative of Denmark said, as it had previously been stated, that the government did not agree with the conclusion of non conformity which implied that foreign nationals under the Charter legally resident or regularly working in the territory of Denmark would have a better legal position in relation to residence and social benefits than nationals from EU-countries. The EU-directive concerning free movement underlined that people from EU-countries had the right to reside in another EU country but did not necessarily have full access to social benefits if they did not find work within a reasonable period of time. Concerning people from outside the EU, residence permits for the purpose of work, studies and family reunification were granted, as a main rule, on the condition that the applicant was self-sufficient. If this condition was no longer met, the Danish Immigration Service may revoke or refuse to extend the residence permit in accordance with the Danish Aliens Act. It was, therefore, not a situation based on the Danish Act on Social Assistance. In some rare situations, according to the Danish Act on Social Assistance, as stated by the ECSR, it was possible to repatriate a person on the grounds that he or she had received social assistance for more than six months. In practice, under this Act, it was only possible to repatriate nationals from the Nordic countries, who had resided in Denmark for less than three years. In fact, only a very small number of persons had been repatriated: three people in 2011, all Nordic citizens, and none in 2012. Several considerations were taken into account concerning the decisions. If the Nordic national was married and cohabiting with a Danish national, a refugee or an alien who had residence in Denmark for more than 7 years, the Nordic national would not be repatriated. There were a number of other considerations, including the duration of the stay, medical conditions and family ties. If the person was not repatriated, due to fulfilling such conditions, he/she had exactly the same right to social assistance as a Danish citizen in the same situation.

135. The Chair recalled that it was a long-standing situation of non-conformity and asked for further clarification concerning the granting and withdrawal of a permanent residence permit.

136. The representative of Denmark said that it was not within his competency to answer with regard to the Aliens Act but he could provide information in the next report. He clarified that people from Nordic countries did not need a residence permit and the situation concerning EU citizens was covered by EU regulations. The situation with regard to third country nationals fell under the Aliens Act.

137. The representative of the Netherlands expressed support to Denmark with relation to nationals from third countries and said that the Netherlands had a similar system.

138. The representative of Lithuania pointed to a difference of opinion between the ECSR and the government of Denmark and considered that the situation was comparable to that of France.

139. The representative of the ETUC pointed out that on the last occasion, the GC had not adopted a warning with respect to Denmark as it had in the case concerning France.

140. The representative of Belgium said that the situation was apparently still not clear and the government should clarify the situation.

141. The GC took note of the information provided and observed that the situation still required further clarification. The GC encouraged the government to provide full details, including the situation in practice, and decided to await the next assessment of the ECSR.

ESC 13§1 GREECE

142. The Committee concludes that the situation in Greece is not in conformity with Article 13§1 of the Charter on the ground that there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.

143. The representative of Greece said that significant changes had been made in the legal framework regarding a general social assistance scheme. A main priority, in accordance with the Medium-Term Fiscal Strategy Framework 2015-2018, was targeted policies to reduce poverty. A guaranteed minimum income pilot programme had been established by virtue of Act 4093/2012, formally presented by the government the previous day, which entitled "Guaranteed Social Income". Its objective was to tackle extreme poverty and ensure a minimum decent standard of living. The aim was for implementation of a generalized programme throughout the country, in order to cover 7% of the country's total population ie. 700,000 persons living in conditions of extreme poverty. The pilot programme would be implemented in 13 municipalities with different socioeconomic characteristics. Its terms and conditions were defined by virtue of a Joint Ministerial Decision of the Ministers of Finance and Labour. It was structured around firstly, the provision of income support on a monthly basis, secondly, the provision of social services and goods and thirdly, labour market integration and reintegration. The beneficiaries of the pilot programme were (a) individuals living on their own or accommodated by hosts and relatives and (b) families. The eligibility criteria included terms of income, property assets and residency. The duration of the pilot programme would be approximately six months and it aspired to constitute the core of a new social welfare strategy for the whole country. Furthermore, information was provided on the payment of a "social dividend", paid as a tax free lump sum to low-income persons and the funding of programmes for homeless persons as well as special provisions for the long-term unemployed. Finally, details were provided concerning major efforts to support vulnerable social groups through tax relief and exemption from a range of fiscal obligations.

144. The GC congratulated Greece for its pilot project and decided to await the next assessment of the ECSR.

ESC 13§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 13§1 of the Charter on the grounds that

- *the level of social assistance benefits is manifestly inadequate;*
- *the granting of social assistance benefits to foreign nationals is subject to an excessive length of residence requirement.*

First ground of non-conformity

145. The representative of Latvia provided information concerning an assessment of existing poverty thresholds which had been made with a view to setting an adequate minimum level for supporting people at risk of poverty and social exclusion. Several conceptual decisions had been taken which would have an impact on the scope and quality of support to

low income people. The Cabinet of Ministers adopted, in December 2013, a roadmap for improving the social security system and the concept paper on defining the minimum income level had been announced. Following the adoption of the newly set minimum income level, it was planned to introduce reforms in the social assistance field to improve efficiency and assess the introduction of a social pension to reduce poverty risks for retired people. Measures to set a minimum level for unemployment benefit would be evaluated and the potential restructuring of the state social benefits would be reviewed, aiming to make them more efficient and targeting the most vulnerable. All the concrete measures would be included in the plan for the introduction of the minimum income level to be submitted to the government by 2016. In compliance with a World Bank study in this context, areas under review included preserving payment of social assistance for four months after starting work, a review of needy status and an increase in the GMI level to extend coverage and eligibility.

146. In answer to a question by the Chair, the representative of Latvia provided information on the minimum level of benefits which had been included in the last report.

147. The GC took note of the information and decided to await the next assessment of the ECSR.

Second ground of non-conformity

148. The representative of Latvia said that at the end of 2014, the Ministry of Welfare started to draw up amendments to the Law on Social Services and Social Assistance (Article 3) regarding definition of the personal scope for entitlement. In order to prevent misinterpretation, amendments would clarify the wording and terminology to improve identification of different groups of nationals of other States Parties, as well as defining more clearly the regulations regarding residency. These amendments aimed to stipulate the principle that social care, social rehabilitation, vocational rehabilitation and social assistance were accessible to all persons who were lawfully residing in Latvia, if they met certain requirements. The representative of Latvia drew attention to the situation in practice, as local governments could award assistance after analysis of existing needs, even if the person held a temporary residence permit. It was foreseen to gather available data in order to analyse the situation and propose new solutions. Latvia was making every effort to target groups of persons in need of assistance and social services.

149. In reply to a question by the Chair, the representative of Latvia said that the government was moving towards an evidence based approach, in order to assess the situation in practice, as well as making legislative changes.

150. The GC took note of the planned amendments and decided to await the next assessment by the ECSR.

ESC 13§1 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- *it is not established that people in need aged below 25 are all entitled to a guaranteed minimum income;*
- *it is not established that people dismissed for serious misconduct, who are in need, are entitled to a guaranteed minimum income;*
- *foreigners in need, nationals of States Parties to the Charter, lawfully resident in Luxembourg are not entitled to a guaranteed minimum income on an equal footing with nationals;*

- *it is not established that people in need, who are not entitled to a guaranteed minimum income (persons aged below 25, persons dismissed for serious misconduct, persons not complying with employment integration schemes, non EU/EEA or Swiss nationals resident for less than five years), have access to adequate social assistance under the Social Assistance Act 2009.*

First, second and fourth ground of non-conformity

151. Additional information is to be provided in the next National Report.

Third ground of non conformity

152. The representative of Luxembourg said that legislation had not yet changed. A new government had been in office for the last nine months and the reform of legislation on guaranteed minimum income was on its agenda. The representative of Luxembourg did not fully understand the conclusion of the ECSR as the condition of residency was applicable to all nationals, including EU citizens. A treaty existed for the EU, which meant that such foreigners were exempted from the 5 year residency clause. If the foreigner was from a Contracting Party to the Charter, they had access to guaranteed minimum income on an equal footing with nationals of Luxembourg. They had a right to guaranteed minimum income after 5 years of residency and also to claim benefits. Moreover, there was another social allowance which granted access to social assistance for all persons in need. This was a genuine right to social assistance that ensured all basic needs were met. Therefore, even if the requirement existed for a 3rd party national to reside in Luxembourg for at least 5 years for a guaranteed minimum income, this did not mean that a person would be refused help. In the case of refusal of this right, there were ways of appealing against the decision.

153. In reply to a question by the Chair concerning other social benefits that were mentioned, the representative of Luxembourg said that financial benefits existed for legally resident migrants, including housing benefit and food coupons, so these did not just concern emergency medical care.

154. The GC took note of the information, encouraged the government to explain clearly all the assistance available in its next report and decided to await the next assessment of the ECSR.

ESC 13§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the Charter on the grounds that, at least in some of the autonomous communities:
- *minimum income eligibility is subject to a length of residence requirement;*
- *minimum income eligibility is subject to age requirements (25 years old);*
- *minimum income is not paid for as long as the need persists;*
- *the level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra).*

First, second and third grounds of non-conformity

155. The representative of Spain said that information had been given to the Secretariat concerning the minimum income and all the information would be provided in the next report. She recalled that the 19 autonomous communities in Spain had responsibility for regulations concerning social services. Concerning the first ground of non-conformity, there was

a minimum income system and a certain period of residence was a precondition for access in all the autonomous communities which, in most cases, was 12 months. It was underlined that agreements of reciprocity existed between some autonomous communities to enable people to continue to receive the minimum benefit when moving to another region without having to justify the length of residence. With regard to the second ground of non-conformity, most regions had established the age of 25 years for entitlement to minimum income, however it was pointed out that there were exceptions in the respective legislation of the autonomous communities and the age of entitlement may be extended to 18 years. Such exceptions came into force in certain circumstances, such as responsibility for dependent minors or handicapped persons, as well as a number of other conditions for entitlement.

156. Concerning the third ground of non-conformity, the duration of the minimum income in the majority of the autonomous communities was 12 months but there were many exceptions to this general rule. In practice, many autonomous communities extended the period of time by 24 to 60 months and the situation was reviewed if beneficiaries fulfilled particular requirements, so there were a variety of circumstances. Moreover, the minimum income was not the only benefit and there were numerous other benefits and services aimed at encouraging active participation in social life. Beneficiaries concerned usually signed a compromise with the social services to take action to improve employability and the situation was reviewed by the autonomous communities concerned as to whether to extend the minimum income or not. Information had been submitted with conditions, periods of entitlement etc which applied in the different regulations of the autonomous communities and all the detailed information would be included in the next report. Furthermore, the government had signed an agreement in July for the setting up of a working group to review the system of minimum income and establish an overview of social resources in order for the system to be more effective, ensure cooperation and improve the situation in the future.

157. The Chair said that it was a complex situation and it would be important for the government to ensure that the detailed information for all the autonomous communities appeared in the next report.

158. The GC took note of the information, encouraged the government to provide all the information in its next report and decided to await the next assessment of the ECSR.

Fourth ground of non-conformity

159. The representative of Spain said that information had been sent to the Secretariat and all the details would be included in the next report. The amounts of benefits people received varied in the different autonomous communities and were sometimes higher or lower than the minimum wage, although on average the amounts exceeded the minimum wage and were over the poverty threshold. Moreover, it was necessary to take into account per capita income and the consumer price index, in which case the differences between the regions were not so great. In all of the autonomous communities, income scales were applied and supplementary benefits were provided for certain circumstances. Furthermore, recent legislative modifications aimed at broadening the rights to minimum income. There was, in fact, a wide system covering minimum income which included many other benefits, including those for disabled or elderly persons.

160. The Chair underlined the importance for the government to provide all the detailed information in the next report.

161. The GC took note of the information, encouraged Spain to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR.

ESC 13§1 « THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA »

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 13§1 of the Charter on the grounds that

- *social assistance benefits are not adequate as they fall manifestly below the poverty threshold;*
- *certain benefits such as social financial assistance and permanent financial assistance are granted to nationals of other States Parties only subject to an excessive length of residence requirement.*
-

First ground of non conformity

162. The representative of the Former Yugoslav Republic of Macedonia said that social protection, as an area of particular public interest, was continually monitored, adjusted and adapted according to the situation of persons in need, taking into account the possibilities of the state to implement policies, and respecting international norms and standards. In the second half of 2009, a new Law on Social Protection was adopted with the main purpose of improving the system of social protection. Information was provided which focused on the increase of the amounts of social financial assistance, which were included in a table provided to the Secretariat for the period 2007 to 2014. According to this table, the amount of social financial assistance was increased by over 34% and during the last three years, 2012-2014, assistance was raised in average by over 10%. In line with the commitments for continuous improvement of the situation of the most vulnerable citizens, as from 2013 the amount of social assistance was increased every year by 5% and according to the government work programme, this trend of yearly increases of social assistance benefits was planned to continue until 2018. It was underlined that a number of other benefits (in cash or in kind) were also provided to socially vulnerable persons. Some new measures included subsidies for energy consumption, conditional cash benefit for secondary education and the recent adoption of the Law on one-time citizens' debt relief. Recent measures had also been taken for subsidising the employment of unemployed persons who were beneficiaries of social assistance, the exemption of socially vulnerable persons from certain payments and humanitarian assistance.

163. The GC took note of the measures which included the increase of the amounts of basic social assistance, encouraged the government to provide full details in the next report and decided to await the next assessment of the ECSR.

Second ground of non conformity

164. The representative of the Former Yugoslav Republic of Macedonia pointed out that the application of the provisions under Article 13 of the Charter was regulated under a range of existing legislation, which included the Law on social protection, Law on health insurance, Law on employment and work of aliens, Law on asylum and temporary protection and other legal acts. These provided for possibilities for foreigners, such as those with permanent residence permits, asylum seekers, persons with the status of recognized refugees and persons under subsidiary protection, to exercise their rights in a number of areas, including social protection. With regard to the rights to social protection, persons under humanitarian protection, recognized refugees and foreigners with permanent residence, had access to rights on an equal footing as citizens of the Former Yugoslav Republic of Macedonia. Asylum seekers and persons with temporary residence permits also had access to certain services, such as institutional accommodation and one-off financial assistance. The Law on social assistance, as regards foreign citizens without a permanent residence, provided for appropriate assistance in cases of urgent need. Moreover, foreign citizens with temporary

residence who regulated their stay in the country on the basis of marriage could exercise their social protection rights as a co-beneficiary of the main bearer.

165. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Article 13§3 - Prevention, abolition or alleviation of need
ESC 13§3 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 13§3 of the Charter on the ground that the granting of personal help and advice services to foreign nationals is subject to an excessive length of residence requirement

166. The representative of Latvia provided the following information in writing:

Article 3 of the Law on Social Services and Social Assistance determines persons who are eligible to receive social services provided from the public finances.

According to the Law on Social Services and Social Assistance social assitance is a financial or a material benefit provided from local governments budget (public finanses) that is alloted on the ground of an evaluation of person's material resources, hence providing a material support to persons and families with low incomes in case of a crisis situation in order to satisfy their basic needs and to build an ability to participate in the improvement of their situation.

According to the Immigration Law which entered into force on 1 May, 2003, a foreigner is entitled to request an issue of a temporary residence permit in following cases:
1) a foreigner is a relative of a person holding the Latvian citizenship or non-citizenship or of a foreigner who has been issued a permanent residence permit;

2) a foreigner is registered in the Commercial Register of the Republic of Latvia as an individual merchant;

3) a foreigner is registered in the Commercial Register of the Republic of Latvia as a member of a board or council, managing clerk, administrator, liquidator or a member of a partnership or holds a valid authorization to represent a merchant (foreign merchant) in activities that are associated with a branch of a merchant represented;

4) a foreigner is registered in the State Revenue Service of the Republic of Latvia as a self-employed person;

5) a foreigner is employed in the Republic of Latvia;

6) a foreigner represents a branch of a foreign merchant;

7) a foreigner participates in a contract of scientific cooperation with an institution that is registered in the Register of Scientific Institutions of the Republic of Latvia;

8) a foreigner obtains an education in the institution that has been accredited by the State Service of Education Quality of the Republic of Latvia;

9) a foreigner receives a medical treatment in the hospital;

10) a foreigner has been granted an alternative status;

11) a foreigner participates in performing an international agreement or an international project in which the Republic of Latvia or a public administration authority or other public authority is a partner;

12) a foreigner provides an assistance to the public administration authority or other public authority of the Republic of Latvia;

13) a foreigner performs religious activities registered in the Register of Religious Organizations and the Institutions thereof;

14) a foreigner has been granted a guardianship to a person who holds a Latvian citizenship or non-citizenship;

15) a foreigner is admitted into a cloister that is registered in the Register of Religious Organizations and the Institutions thereof;

16) a foreigner participates in the exchange program for students or in an internship or a traineeship in an educational institution or an association of the Republic of Latvia;

17) a foreigner has applied for a divorce of a marriage where a child holding a Latvian citizenship or non-citizenship is born;

18) a pre-trial institution or a court of the Republic of Latvia requests a foreigner to reside in Latvia till the decision in the criminal case is reached;

19) a foreigner has lost the status of permanent residency in the European Union while emigrating to other country, if an issue of a residence permit is requested no later than three years after the act of emigration;

20) a foreigner has been granted a permanent residency in the European Union ;

21) a foreigner has been granted a temporary protected status;

22) a foreigner is entitled to reside in the Republic to Latvia according to international agreements on cancelling the visa requirement, and has a sufficient amount of incomes and has reached the age of retirement;

23) a foreigner has been granted a status of a stateless person;

24) a foreigner has invested in the core capital of an enterprise or has established a new enterprise;

25) a foreigner has purchased a property in the Republic of Latvia;

26) a foreigner has any liabilities to a credit institution of the Republic of Latvia.

As follows from the above, most of cases where person with temporary residence permit has no right to receive social services, are cases when person does not meet the conditions of functional status in accordance with Latvian law giving the right to social care, social and vocational rehabilitation services.

Article 30 of the Immigration Law prescribes, that a temporary residence permit shall be issued on a condition that a foreigner will not request a material benefit from the national social assistance system.

In most of the cases when requesting an issue of a permanent residence permit a foreigner shall be asked to determine the financial sources for providing of persons basic needs in Latvia, therefore the necessity for local governments social assistance benefits is excluded.

The Law on Social Services and Social Assistance stipulates that a foreigner who has been granted an alternative status (persons with a temporary residence permit entitled to receive the GMI benefit and the services of shelters and consultations of social work specialists as of 2007.

Concerning the above mentioned, most of cases person with temporary residence does not meet the conditions of functional status in accordance with Latvian law giving the right to social care, social and vocational rehabilitation services from public finances, nor meet material criteria to be eligible for means-tested municipal social assistance benefits.

There are 514 social service providers newly registered in the Register of social service providers during the period from 2011 to 2013:

Institutions established by state or local municipality and respective units – 325;

Institutions established by non- governmental organisations – 180;

Individual entrepreneurs and self-employed persons- 9.

To avoid nonconformity with Article 13§3 of the Charter The Ministry of Welfare elaborates the amendments to the Law On Social Services and Social Assistance Article 3 defining the personal scope entitled to the rights to receive social services and social assistance.

In order to prevent misinterpretation regarding the personal scope entitled to the rights to receive social care services, social rehabilitation services and vocational rehabilitation services and social work assistance to certain groups of persons, which now exists because of actual wording of the Law On Social Services and Social Assistance Article 3. These amendments provide to clarify the wording and terminology in order to better identify different groups of nationals of other States Parties, as well as more clearly defining the regulation regarding those persons who settle in Latvia for their residence or move their residence outside the country.

These amendments aim to stipulate the principle that social care services, social rehabilitation and vocational rehabilitation services and social work assistance are accessible to all persons who have lawful rights to reside and who are lawfully residing in Latvia, if they meet certain requirements in order to receive respective assistance and service.

If these amendments will be adopted by the government, then according to the Law On Social Services and Social Assistance the rights to the services and assistance mentioned in this Law will be to those nationals of other State Parties to whom the temporary residence permits have been issued. However to cover the expenses of these services or assistance, the public finances will not be involved (i.e. the budget expenses of state or local governments).

Analysing only the existing legislative acts, it is understandable that the European Committee of the Social Rights could come to such conclusion that the situation of Latvia is not in conformity with the Charter. However, as the main decision taker, regarding the awarding of additional services (pursuant to the Regulation of the Cabinet of Ministers No. 291 of June 3, 2003 „Requirements for Social Service Providers", in a shelter / night shelter client shall be provided with: (i) consultation and advice from social work specialist; (ii) with the possibility to use sanitary rooms with a toilet and shower; (iii) with the possibility to use the necessary hygiene products; (iv) with the possibility to use a room or place for washing, drying and ironing of clothing; (v) with the possibility to use disinfected bedding; (vi) with supper and breakfast. A client shall be ensured with personal safety and protection of his or her effects during the entire time period of his or her stay at a shelter or night shelter) are local governments, in practice there have been cases when these entities award such assistance after analysing the existing needs of the person even if the person holds temporary residence permit. At the same time there are no actual data or statistics which could prove that the problem exists in practice, but this can't be seen as an evidence to the premise that such problem does not exist. Taking into account this situation and the conclusions of ECSR, in order to develop the policy which is based on evidence, we are planning to gather available data in order to analyse the situation and to propose new solutions according to the expertise conducted.
Taking into account the above mentioned, Latvia is making the effort to target those groups of persons in need for the social services.

ESC 13§3 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 13§3 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

167. The representative of Poland provided the following information in writing:

À expiration de la période sur laquelle porte de rapport, une nouvelle loi sur les ressortissants étrangers a été votée (12 décembre 2013). Cette loi a amendé la loi sur l'assistance sociale – pour ce qui concerne l'accès des étrangers à l'assistance sociale.

Conformément aux nouvelles dispositions adoptées, ont droit à l'assistance sociale, les ressortissants étrangers domiciliés et séjournant sur le territoire de la République de Pologne, s'ils possèdent:

- un permis de séjour,
- un permis de résidence de longue durée en UE,
- un permis de séjour temporaire délivré vu:
- un permis de résidence de longue durée en UE délivré par un autre état membre de l'UE et l'intention d'exercer un travail ou de déployer une activité économique sur le territoire de la République de Pologne, l'intention de poursuivre des études ou une formation professionnelle ou au cas où le demandeur présente d'autres motifs justifiant son désir de résider sur le territoire de la République de Pologne (situations de caractère exceptionnel – art. 187),
- l'obtention du status de réfugié ou de protection complémentaire,
- un permis de séjour pour des raisons humanitaires ou l'attribution d'un permis de séjour toléré (dans ce cas, les prestations auxquelles le ressortissant étranger a droit concernent uniquement l'hébergement, le repas, les vêtements in dispensables, une allocation ciblée).

Permis de séjour

Le permis de séjour est accordé à un ressortissant étranger pour une période indéterminée et à sa demande, si:

- il est enfant d'un ressortissant étranger, titulaire d'un permis de séjour ou d'un permis de résidence de longue durée en UE, et reste sous sa tutelle parentale:
- né après la délivrance à ce ressortissant étranger du permis de séjour ou du permis de résidence de longue durée en UE ou bien
- né pendant la période de validité du permis de séjour temporaire délivré à ce ressortissant étranger, ou bien
- il est enfant d'un citoyen polonais et reste sous sa tutelle parentale, ou bien
- il est une personne d'origine polonaise et désire s'installer sur le territoire de la République de Pologne, ou bien
- il est marié, le mariage étant reconnu par la loi polonaise, avec un citoyen polonais depuis au moins 3 ans précédant le jour de la déposition de la demande de permis de séjour, et si directement avant la déposition de cette demande, il a séjourné pendant au moins deux ans sans interruption sur le territoire de la République de Pologne, sur la base d'un permis de séjour temporaire accordé du fait du mariage avec un citoyen polonais ou bien à la suite de l'obtention du status de réfugié, de protection complémentaire ou du permis de séjour pour des raisons humanitaires, ou
- il est victime de la traite d'êtres humains au sens de l'art. 115 § 22 du Code pénal et:

– a séjourné sur le territoire de la République de Pologne immédiatement avant la déposition de la demande de permis de séjour pendant au moins un an en vertu d'un permis de séjour temporaire pour les victimes de la traite d'êtres humains,
– a coopéré avec les forces de l'ordre dans le cadre d'une procédure pénale pour crime visé à l'art. 189a § 1 du Code pénal,
– a des craintes justifiées pour rentrer dans son pays d'origine, confirmées par le procureur chargé du dossier de poursuite pour infraction visée à l'art. 189a § 1 du Code pénal, ou bien
– si immédiatement avant la déposition de la demande de permis de séjour, il avait séjourné sans interruption sur le territoire de la République de Pologne pendant une période d'au moins 5 ans en vertu du status de réfugié, de protection complémentaire ou de permis de séjour pour des raisons humanitaires, ou bien,
– si immédiatement avant la déposition de la demande de permis de séjour, il a séjourné sur le territoire de la République de Pologne pendant au moins 10 ans en vertu du permis de séjour toléré délivré en application de l'art. 351 point 1 ou 3, ou bien
– s'il a obtenu l'asile sur le territoire de la République de Pologne, ou bien
– s'il possède une Carte de Polonais valide et a l'intention de s'installer sur le territoire de la République de Pologne de façon permanente/

Le permis de résidence de longue durée en UE

Le permis de résidence de longue durée en UE est accordé à un ressortissant étranger pour une période indéterminée, à sa demande, s'il séjourne sur le territoire de la République de Pologne légalement et sans interruption pendant une période de 5 ans, immédiatement avant la déposition de la demande, et s'il remplit les conditions suivantes :

– dispose de revenus stables et réguliers, qui suffisent à sa subsistance et celle des membres de sa famille, dont il a la charge,
– possède une assurance maladie au sens de la loi du 27 août 2004 sur les prestations des soins de santé financés par les deniers publics ou bien la confirmation de la couverture par l'assureur, des frais médicaux sur le territoire de la République de Pologne.

À l'heure actuelle, on ne prévoit pas d'autres modifications du champ d'application de loi sur l'assistance sociale.

Article 13§4 - Specific emergency assistance for non-residents
CSE 13§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 13§4 of the 1961 Charter on the ground that it has not been established that all non-resident foreign nationals in need – whether legally present or in an irregular situation – are entitled to emergency medical and social assistance.

168. The representative of Croatia provided the following information in writing:

Ground of non-conformity:

According to the report, "foreigners who do not have permanent residence in the Republic of Croatia, when their life and health are endangered, are granted the right to temporary housing" under Section 103 of the Social Welfare Act. The Committee asks the next report to clarify whether this provision concerns only temporary residents or also foreigners legally present but without residence status as well as foreigners in irregular situation. The Committee furthermore notes from the information provided to the Governmental Committee

(Report concerning Conclusions XIX-2 (2009) final, §231) that emergency medical assistance is provided in case of need to foreigners in irregular situation "in police procedures" and asks the next report to clarify whether foreigners in an irregular situation, other than asylum-seekers or foreigners under subsidiary protection or with trafficking-victim status, are only entitled to social and medical assistance when detained or in a Reception Centre for foreigners or also under other circumstances. The Committee holds that the information provided does not allow to establish that all non-resident foreign nationals in need, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance.
Reply:

Article 103 of the Social Welfare Act (Official Gazette, No. 33/12), which is no longer in force, regulated the right to temporary accommodation for foreign citizens. On 1 January 2014, the Social Welfare Act (OG, No. 157/13) entered into force. The provision of Article 22 of this Act regulates who can exercise rights within the social welfare system, in the following manner:

"(1) The following persons have rights in the welfare system under the conditions prescribed by this Act:

– a Croatian citizen with residence in the Republic of Croatia;

– a foreigner and stateless person with permanent residence in the Republic of Croatia.

(2) A foreigner under subsidiary protection, foreigner with established trafficking victim status, asylum grantee and members of their family with legal residence in the Republic of Croatia, have the rights in the welfare system under the conditions prescribed by this Act and a special regulation.

(3) In exceptional cases, a person not covered by paragraphs 1 and 2 of this Article may exercise the right to one-time allowance and temporary accommodation under the conditions prescribed by this Act, if their living circumstances so require."

As follows from the indicated legal provisions, all the rights prescribed by the Social Welfare Act can be exercised by foreigners and stateless persons with permanent residence in the Republic of Croatia, foreigners under subsidiary protection, foreigners with established trafficking victim status, as well as asylum grantees and members of their family with legal residence in the Republic of Croatia, under the prescribed conditions. Regardless of their status, all foreign citizens who are not explicitly indicated can exercise the right to one-time allowance and temporary accommodation if this is necessary with regard to their living circumstances. All foreign citizens in need are entitled to essential assistance within the social welfare system in the manner and under the conditions prescribed by the Social Welfare Act.

ESC 13§4 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§4 of the 1961 Charter on the ground that it is not established that emergency social assistance is available to all non-resident foreign nationals of other States Parties, irrespective of their status.

169. The representative of Czech Republic provided the following information in writing:

Among others, also people residing in the Czech Republic under the Act No. 326/1999 Coll., stipulating conditions of Residence of Foreign Nationals in the Czech Republic are entitled to extraordinary immediate assistance. The extraordinary immediate assistance allowance may be provided also to a person who resides in the territory of the Czech Republic in conflict with the legal regulation on the residence of foreigners, i.e. in the case of an "illegally". The Act on Assistance in Material Need thus allows the state to provide effective assistance to persons who are victims of trafficking, who provide commercial sex, are victims of abduction, etc.

ESC 13§4 GREECE

The Committee concludes that, during the reference period, the situation in Greece was not in conformity with Article 13§4 of the 1961 Charter on the ground that it cannot be established that foreign migrants in an irregular situation received emergency social assistance as needed.

170. The representative of Greece provided the following information in writing:

With regard to the Conclusion of the European Committee of Social Rights **for the foreign immigrants in state of need**, we would like to inform you on the following:

Legal Context
With regard to the provision of social and medical assistance (shelter, food, immediate treatment, clothing etc.) to applicants of international protection, P.D. 220/2007 continues to be applicable (*adaptation of the Hellenic legislation to the provisions of the Directive 2003/9/EC of the Council, dated January 27th, 2003, regarding the minimum requirements for the receipt of the asylum seekers to the state members- except for the provisions of the article 5 thereof [official documents], which was abolished by the article 33 of the P.D. 114/2010 (article 8, 12, 13, 14, 15 and 16*).
In the P.D. 220/2007, and specifically in Chapter B' thereof (*conditions of reception*), the following are provided for:
The competent authorities for the reception and examination of asylum requests notify the applicant immediately and in any case within 15 days, granting him an informative bulletin in a language he comprehends. The procedure for the examination of the petition is described in such form and the existing circumstances of reception are also mentioned, including the medical treatment, as well as the operation of the Representation of the U.N. High Commissioner for the Refugees in Greece and the rest organizations granting assistance and legal support to the asylum seekers.
To the applicant who does not have any shelter or sufficient resources to cover the needs of his sheltering, shelter is granted at a Hospitality Center or another area, upon his application, submitted to the competent authorities of reception and examination. The allocation of every applicant to these centers and areas is made by the Central Authority after having been taken into mind the maintenance of the family unity of the applicants, the operation of agencies of social provisions, the preservation of harmonious relations between the applicants and the possibility of the applicant's movement to the defined place of stay. The competent authorities, at the sheltering granted to the applicant, take – to the extent possible- the appropriate measures for the maintenance of his family unity that is found in the country, provided he also consents to this.
Furthermore, it is determined that the competent reception and hospitality authorities act so as to ensure the material reception conditions for the asylum seekers. These conditions grant to the applicants a level of living which ensures the health, the coverage of biotic needs and the protection of their fundamental rights.

The mentioned level of living is ensured also in the special case of the persons with special needs, as well as in cases of persons with disability 67% or more, the Ministry of Health and Social Solidarity grants a disability allowance for as long as the examination of the application lasts, provided that the applicants' stay at Hospitality Centers is not feasible. The mentioned allowance is paid by the competent Service of the Prefectural Local Administration of the applicant's place of stay.
Finally, the necessary medical, pharmaceutical and hospital treatment is granted to the applicants gratis, on condition that they are unsecured and financially weak. This treatment includes :
a. Laboratory and medical examinations in State hospitals, health centers or regional medical offices.
b. Administration of pharmaceutical products upon doctor's prescription serving at the institutes of the previous sentence, attested by the director of them,
c. Hospital treatment at State hospitals which includes hospitalization at C' Class hospital bed.
The first aid to the applicants is granted in every case gratis.
Additionally, specialized medical care is also granted to the applicants with special needs.

With regard to the provision of social and medical assistance to international protection beneficiaries (*recognized refugees and beneficiaries of auxiliary protection*), P.D. 141/2013 (Gov.Gaz. 226A') was published on October 21st 2013, which serves the purpose of complying with Directive 2011/95/EC of the European Parliament and the Council of December 13th 2011, regarding the requirements for the recognition of the foreigners or the non-indigenous as beneficiaries of international protection for a unified status for the refugees or for the persons entitled to auxiliary protection and for the content of the protection provided.
In the P.D. 141/2013, and specifically in Chapter Z thereof (*content of international protection*), which applies on the recognized refugees and beneficiaries of auxiliary protection, the following are determined :
I. *Article 30 (social assistance)* The necessary assistance is granted to the beneficiaries of international protection in matters of social assistance with the conditions that apply for the Greek citizens as well.
II. *Article 31 (medical treatment).* The beneficiaries of international protection have access to medical treatment, on the conditions that apply on the Greek citizens as well.
To the beneficiaries of international protection who have special needs and especially the pregnant women, the persons with special needs, the persons who have suffered torturing, rape or other serious forms of psychological, physical or sexual violence, or the minors who have been victims of any form of maltreatment, negligence, exploitation, torturing, brutal, inhuman or humiliating treatment or who have suffered because of armed conflicts, it is granted a sufficient medical treatment, including the therapy for mental disorders wherever required, on the conditions that apply on the Greek citizens as well.
III. *Article 33 (Access to shelter)* The beneficiaries of international protection have access to a shelter on the conditions and restrictions that apply on the citizens of third countries who legally live in the country, taking into account the need to ensure equal opportunities as to the access to shelter.
IV. *Article 35 (access to social integration services)* The beneficiaries of international protection follow the appropriate programmes of social integration that are prepared by the competent services of the Ministry of Labour, Social Security and Welfare.
It is noted that, according to article 28 of P.D. 114/2010, as this was modified and is in force, the competent decision authorities may grant to the applicant whose the application for international protection they reject, a status of stay for humanitarian reasons. The rights of the auxiliary protection status holders are simulated to those of the protection for humanitarian reasons holders.
Finally, it is worth mentioning the no. Y1.G.P.oik.92490/2013 (Gov.Gaz. 2745B') Decision of the Minister of Health "Programme of medical control, psychokinetic diagnosis and support

and reference of the incoming without legalization documents, citizens of third countries, to First Reception Structures".
The main work of the group for the medical control and the psychokinetic support of the First Reception Centers and the Mobile or Extraordinary Units of First Reception is to provide wherever necessary, the appropriate therapeutical intervention and ensure, per case, the promotion of those who are sick, to competent sanitary structures for the further care of their health regardless the term thereof, […], to ensure the health of the citizens of third countries that enter the country with no legalization documents and ensure the equal application of the right to health, according to the provisions and the decisions of the international courts.

Programmes
During the period since 01.01.2012 until 30.06.2014, the implementation of programmes in the context of the European Refugees Fund has been assigned to agencies, with the purpose to ensure the access to social, medical and legal support.
In the said programmes, actions for the coverage of basic needs (shelter, food, clothing) are included as well as provision of medical treatment for illegally newly-entered citizens of third countries who possibly need international protection.
The programmes assigned in the form of "Emergency Measures" were addressed to newly entered citizens of third countries who possible need international protection, while the programmes that have been assigned, in the context of "Regular Programmes", were addressed, per case, to asylum seekers, beneficiaries of international and auxiliary protection and recognized refugees.
The mentioned programmes are analytically quoted in the list that follows.

TABLE OF MEDICAL & PSYCHOSOCIAL SUPPORT PROGRAMMES OF THE EUROPEAN REFUGEE FUND					
URGENT MEASURES 2011					
No	Implementation Body	Implementation Period	Amount (€)	Number of Beneficiar-ies	SERVICES
1	MEDECINS DU MONDE	01/03/2012-31/08/2012	200.000	21.600	Medical and pharmaceutical care, social and psychological support (Athens - Salonica)
2	MEDICAL INTER-VENTION	01/03/2012-31/08/2012	536.511,62	3.200	Medical, psychiatric and social support, distri-bution of personal hygiene items
3	PRAKSIS	01/03/2012-31/08/2012	187.785	2.500	Medical care, social and legal support
4	MEDECINS DU MONDE	01/03/2012-31/08/2012	337.070	10.560	Medical and pharmaceutical care, social and psychological support (Patra)
5	GREEK COUNCIL FOR REFUGEES	01/04/2012-31/08/2012	1.200.000	2.050	Provision of material reception conditions, such as housing, by means of rent subsidy or temporary stay at a hotel, and food support
6	HELLENIC CEN-TRE FOR DIS-EASE CONTROL & PREVENTION	01/03/2012-31/08/2012	1.056.100	36.000	Medical and psychosocial services (screening) in the Prefecture of Evros
REGULAR PROGRAMME 2011					
No	Implementation Body	Implementation Period	Amount (€)	Number of Beneficiar-ies	SERVICES
1	PRAKSIS	1/9/2012-31/03/2013	53.333,33	600	Medical and pharmaceutical care of unaccom-panied minors who are asylum seekers
2	AITIMA	1/4/2012-31/1/2013	55.555,56	950	Social support
3	HELLENIC RED CROSS	1/5/2012-30/11/2012	25.690	1400	Psychosocial support
4	GREEK COUNCIL FOR REFUGEES	01/07/2012-30/04/2013	83.333,33	400	Medical and psychosocial support
5	MEDICAL INTER-VENTION	01/09/2012-31/01/2013	111.111,11	2.000	Medical, psychiatric and social support
6	SUPPORT CEN-TRE FOR RE-PATRIATED & MIGRANTS	01/07/2012-30/04/2013	12.300	100	Social support and counseling
7	PRAKSIS	01/07/2012 -	72.745	1.100	Social support, assistance in means of sub-

		30/06/2013			sistence (acknowledged refugees)
8	ARSIS	01/07/2012 - 30/06/2013	49.819	200	Social support (acknowledged refugees)
9	PANHELLENIC ASSYRIAN ASSOCIATION	01/11/2012 - 31/07/2013	47.490	300	Assistance in means of subsistence (acknowledged refugees)
10	HELLENIC RED CROSS	01/01/2012 - 31/12/2012	187.500	1.100	Psychosocial and medical care, counseling services, rent subsidy, assistance in means of subsistence (acknowledged refugees)
11	GREEK COUNCIL FOR REFUGEES	01/07/2012 - 30/06/2013	255.060	750	Psychosocial care, counseling services, rent subsidy (acknowledged refugees)
12	ILIACHTIDA	01/09/2012 - 30/06/2013	44.000	160	Social counseling (island of Lesvos, acknowledged refugees)

URGENT MEASURES 2012					
No	Implementation Body	Implementation Period	Amount (€)	Number of Beneficiaries	SERVICES
1	MEDECINS DU MONDE	1/2/2013 - 30/4/2013	654.000	9.500	Medical, psychological and legal support
2	MEDECINS DU MONDE	1/11/2012 - 30/4/2013	150.000	16.600	Medical, psychosocial and pharmaceutical support
3	HELLENIC RED CROSS	1/12/2012 - 30/4/2013	24.000	400	Legal and social support, distribution of clothes and shoes
4	MEDICAL INTERVENTION	1/11/2012 - 30/4/2013	285.000	1.000	Medical care and social support
5	HELLENIC CENTRE FOR DISEASE CONTROL & PREVENTION	1/2/2013 - 30/4/2013	458.200	3.000	Medical care
URGENT MEASURES 2013					
No	Implementation Body	Implementation Period	Amount (€)	Number of Beneficiaries	SERVICES
1	AITIMA	01/05/2013-31/10/2013	68.000	1.000	Legal and social counseling

2	MEDICAL INTER-VENTION	01/05/2013-31/10/2013	341.000	5.600	Medical, psychiatric and social support, distribution of personal hygiene items
3	MEDECINS DU MONDE	01/05/2013-31/10/2013	481.000	8.500	Medical, psychosocial and legal support
4	SUPPORT CENTRE FOR REPATRIATED & MIGRANTS	01/09/2013-31/10/2013	16.000	150	Social and legal support
5	MEDECINS DU MONDE	01/05/2013-31/10/2013	162.000	21.500	Medical and pharmaceutical care, social and psychological support
REGULAR PROGRAMME 2012					
No	Implementation Body	Implementation Period	Amount (€)	Number of Beneficiaries	SERVICES
1	AITIMA	1/11/2013-30/6/2014	38.000	1.000	Social care
2	MEDICAL INTER-VENTION	1/1/2014-30/6/2014	60.000	1.500	Medical care
3	SUPPORT CENTRE FOR REPATRIATED & MIGRANTS	1/11/2013-30/06/2014	17.000	180	Social care
4	HELLENIC RED CROSS	1/9/2013-30/6/2014	157.022	820	Psychosocial and medical care, counseling services, rent subsidy, assistance in means of subsistence (acknowledged refugees)
5	GREEK COUNCIL FOR REFUGEES	1/9/2013-30/6/2014	161.000	900	Psychosocial care, counseling services, rent subsidy (acknowledged refugees)
6	GREEK YWCA	1/2/2014-30/6/2014	27.000	100	Social counseling (women acknowledged refugees)

ESC 13§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§4 of the 1961 Charter on the ground that it is not established that legislation and practice guarantee that all unlawfully present foreigners receive emergency social assistance for as long as they might require it.

ARTICLE 14 – THE RIGHT TO BENEFIT FROM SOCIAL SERVICES
Article 14§1 – Promotion or provision of social services

ESC 14§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 14§1 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement:

171. The Representative of Latvia said that this year the relevant Ministry had started with the elaboration of amendments to the Law on social services and social assistance.

172. These amendments aimed to stipulate the principle that social care services, social rehabilitation and vocational rehabilitation services and social work assistance were to be accessible to all persons who had lawful rights to reside in Latvia provided they met certain requirements to receive assistance and service respectively.

173. The GC hoped that these amendments were to become law very soon and complied with requests of the ECSR. In view of the information given the GC decided to await the next assessment of the ECSR.

ESC 14§1 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 14§1 of the 1961 Charter on the grounds that it has not been established that:

- *monitoring arrangements for guaranteeing the quality of the social services supplied by providers do exist;*
- *spending on social services is sufficient.*

174. Additional information is to be provided in the next National Report.

ESC 14§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 14§1 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length-of-residence requirement.

175. The Representative of Poland said that laws adopted in December 2013 ruled the access to social assistance for certain categories of foreigners in particular for those living on the Polish territory for humanitarian reasons.

176. However, the situation remained unchanged for foreigners in general, for example migrant workers. There was no intention to change eligibility condition for social and welfare services which is the EU long term residence permit issued after five years of residence in Poland.

177. The GC took note of the information provided and decided to await the next assessment of the ECSR.

ESC 14§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 14§1 of the 1961 Charter on the grounds that:

- *it has not been established that effective access to social services is guaranteed;*
- *the conditions to be met by providers of social services are not clearly defined;*
- *it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist*

178. The representative of Spain provided the following information in writing:

En ce qui concerne les trois points suivants mentionnés dans les conclusions, on a développé une sorte de mesures :

- La garantie d'accès aux services sociaux.
- Les conditions qui doivent remplir ceux qui prêtent des services sociaux doivent être clairement définies.
- Les mécanismes de supervision pour garantir que les fournisseurs de services sociaux remplissent les conditions qui assurent leur qualité.

Dès **l'Institut de la Jeunesse d'Espagne,** les suivantes actions sont mises en œuvre :

- La Stratégie d'Entreprenariat et Emploi Jeune. Il s'agit d'un ambitieux plan favorisant l'accès aux services d'orientation et aide à la recherche d'emploi, l'encouragement des mesures d'accès au premier emploi pour les jeunes, et qui protège les collectifs les plus vulnérables et qui ont plus de besoins d'assistance pour la part des pouvoirs publics pour atteindre leur insertion professionnelle. La Stratégie a une planification triennale, de 2013 à 2016. Ce plan est orienté à enrayer le grave problème du chômage des jeunes, qui dans les sujets du Programme d'Action Mondiale pour les jeunes, est le sujet qui touche les jeunes d'Espagne plus de près. Le plan est composé d'une sorte d'actions consacrées à améliorer l'insertion des jeunes dans le marché du travail, avec une stratégie multidisciplinaire qui essaie d'impliquer toutes les entités sociales qui peuvent favoriser l'emploi des jeunes, tout en mettant en œuvre d'actions de divers domaines. Les entités peuvent adhérer à cette action moyennant une procédure on-line : http://www.empleo.gob.es/es/estrategia-empleo-joven/

- Emploi et l'Entreprenariat des Jeunes. Dans l'Institut de la Jeunesse, comme organisme de l'Administration Centrale spécifiquement consacré à la jeunesse, on commence d'actions et on stimule la coopération avec d'autres entités pour la réalisation de ces objectifs. En collaboration avec la Fédération Espagnole de Communes et Provinces, l'INJUVE, dans le cadre de la Convention spécifique renouvelée tous les ans pour la distribution de subventions à programmes locaux en matière des jeunes, on organise l'octroi de 30 aides, pour un montant global de 180.000 euros, à autant d'autres projets conçus par entités locales espagnoles pour favoriser l'emploi et l'entreprenariat des jeunes dans leurs correspondants domaines territoriaux. Comme dans le cas de la mesure précédente, il s'agit d'une action dans le domaine des services sociaux, spécifiquement consacrée aux jeunes, pour encourager leur accès aux services d'orientation et aide pour l'obtention d'un emploi par l'intermédiaire de l'entreprenariat, avec un spécial accent sur les jeunes avec un plus grand besoin d'employabilité, et qui protège les collectifs les plus vulnérables, dans ce cas dans le domaine local.

Toute l'information pour participer peut être consultée ici : //www.injuve.es/conocenos/noticia/convocatoria-de-ayudas-a-entidades-locales

- Garantie des Jeunes. Il s'agit d'une mesure pour garantir qu'à partir de 2014, tous les jeunes de moins de 25 ans reçoivent une bonne offre d'emploi, éducation continue, formation d'apprentissage ou un stage dans un délai de quatre mois après avoir fini l'éducation officielle ou rester en chômage. Cette mesure, convenue par les États membres de l'Union Européenne en février 2013, cherche mettre en œuvre dans chacun des États des mesures garantissant l'accès aux services sociaux pour ces membres les plus vulnérables de la jeunesse et avec de plus grands besoins d'appui et d'assistance du côté des pouvoirs publics. http://www.injuve.es/empleo/noticia/plan-nacional-de-implantacion-de-la-garantia-juvenil

- Connaissance et supervision de réalité et les mesures mises en œuvre. Dans l'Institut de la Jeunesse est développé l'Observatoire de la Jeunesse http://injuve.es/observatorio en tant qu'organisme spécifiquement consacré à la connaissance des jeunes de l'Espagne, les politiques les touchant et leur situation. L'Observatoire de la Jeunesse a été créé il y a plus de deux décennies, et il maintient les mêmes compétences d'étude, connaissance et publication des indicateurs sur la jeunesse, sa réalité, sa vision et ses tendances. L'instrument spécifique que l'Observatoire de la Jeunesse effectue sur indicateurs des jeunes à l'échelon national, qui est le plus important dans ce domaine qui comprend la jeunesse de toute l'Espagne, est le Rapport « La Jeunesse en Espagne », qui est effectué tous les ans par une équipe de sociologues spécialisée, et qui recueille une vaste gamme des indicateurs sur la réalité actuelle des jeunes dans notre pays. On peut accéder à ce Rapport online et le télécharger gratuitement dans notre site web, où sont publiés ceux des années précédentes : http://www.injuve.es/observatorio/demografia-e-informacion-general/informe-de-la-juventud-en-Espana-2012. Le dernier rapport publié, en juin, est celui correspondant à l'année 2012 : http://www.injuve.es/sites/default/files/2013/26/publicaciones/IJE2012 0.pdf

- Participation des Jeunes. L'Institut de la Jeunesse maintient depuis longtemps plusieurs lignes d'action pour la promotion d'associations des jeunes en toute Espagne. Entre les plus importantes il y a une ligne de subventions à associations des jeunes, qui est en train de s'effectuer depuis il y a plus de quinze ans. Le but de cette subvention est le maintien, le fonctionnement et l'équipement des associations des jeunes et des entités consacrées à titre exclusif à la réalisation d'activités en faveur des jeunes, dans le domaine public. Les subventions sont convoquées tous les ans et toute la procédure pour opter aux aides peut être effectuée online. La convocation actuelle est encore en vigueur http://www.injuve.es/asociaciones/noticia/convicatoria-subvenciones-INJUVE-2013

- Les Jeunes en action. Dans le paragraphe de Participation des Jeunes, il faut souligner le programme européen « Jeunesse en Action » (qui a fonctionné avec ce nom jusqu'à 2013, en passant en 2014 ses actions au programme Erasmus +), qui est géré dans chaque pays d'une façon autonome, en coordination avec la Commission Européenne, et dont l'Agence Nationale pour l'Espagne est dans l'INJUVE. Ce programme est en gérant dans l'INJUVE depuis son origine, il y a sept ans, bien que déjà avant l'Institut de la Jeunesse gérait les programmes européens. À travers ce programme on a donné un énorme élan à la participation et l'Éducation Non Officielle en Espagne, tout en rassemblant divers modes de participation des jeunes. La convocation annuelle, récemment finie, est publiée dans le site web de l'INJUVE : http://www.injuve.es/europa/noticia/%C2%A12680000-euros-para-proyectos-de-jovenes

- Réseau de Centres d'Information des Jeunes. Dans le paragraphe de Participation des Jeunes, est aussi important le Réseau de Centres d'Information des Jeunes. Dans notre pays il y a plus de 3.000 centres d'information des jeunes dépendants des Communautés Autonomes, des conseils municipaux et de diverses initiatives locales. Dans ce lien on peut trouver les centres les plus proches des chacun des jeunes, ainsi que tous les services qu'on peut obtenir. http://injuve.es/conocenos/red-de-centros-de-informacion-juvenil

- Réseau Eurodesk. Dans le paragraphe de Participation des Jeunes, il est d'une spéciale importance également le Réseau Eurodesk, d'information sur des programmes et initiatives européennes d'utilité pour les jeunes, et il est spéciale celles concernant l'emploi, la formation, la mobilité et la connaissance des réalités et possibilités européennes. Le réseau Eurodesk fournit aussi information sur tous les moyens et chances pour les jeunes à l'échelon national, dans chacun des États de l'Union Européenne, pour l'accès aux services décrits précédemment. Ce Réseau est composé de 50 postes locaux distribués sur toute l'étendue de l'Espagne, et avec une plateforme online qui mette à jour et distribue l'information parmi les institutions européennes et parmi les postes locaux eux-mêmes pour fournir les jeunes toute l'information. www.eurodesk.injuve.es/

La **Direction Générale de Services pour la Famille et l'Enfance** fait les suivantes considérations sur les éléments suscitant la non-conformité :

- Accès effectif aux services sociaux. On n'informe pas sur l'existence de tarifs dans la prestation de ces services.

En premier lieu, il faut dire que dans toutes les Communautés Autonomes et dans les villes autonomes de Ceuta et Melilla on établit l'accès effectif, sans discrimination, aux services sociaux comme un droit subjectif de tous les citoyens. En outre, dans les principes inspirateurs des lois de services sociaux, cet accès effectif reste manifeste en principes comme l'accès universel, la proximité, ou le principe de coordination.

Même les lois les plus anciennes de services sociaux, les dénommées lois de première génération, comme par exemple la loi 2/1988, du 4 avril, de services sociaux de l'Andalousie, recueille dans l'article 2 comme principe général des services sociaux l'égalité et l'universalité, à traves l'assistance de tous les citoyens sans aucune discrimination en raison de sexe, état, race, âge, idéologie ou croyance. Également dans l'article 3 établit que seront titulaires de droit aux Services sociaux tous les résidents en Andalousie et les personnes de passage non étrangères, ainsi que les ressortissants étrangers, les réfugiés et apatrides résidents sur le territoire.

De même, récemment on a adopté le **Catalogue de Référence des Services Sociaux** (Journal Officiel du 16 mai 2013), fruit du consensus et du travail des Communautés Autonomes, villes autonomes de Ceuta et Melilla et le Ministère de la Santé, des Services Sociaux et de l'Égalité, qui rassemble dans un seul document les prestations auxquelles pourraient accéder les personnes sur l'ensemble du territoire de l'État, en établissant également des principes de qualité et bon usage communs. Entre les principes inspirateurs qui orientent les prestations et les services du Catalogue, on reconnaît l'accès universel et la non discrimination :

- **Universalité :** Les pouvoirs publics doivent garantir à toutes les personnes le droit à accéder aux prestations de services sociaux, conformément aux termes et conditions établis par la législation de chacune des Communautés Autonomes, administration avec compétence exclusive sur cette matière.

- **Égalité :** l'accès et l'utilisation des prestations sera fournie sans discrimination en raison d'ethnie, sexe, orientation sexuelle, état civil, âge, handicap, idéologie ou croyance, ou toute autre condition personnelle ou sociale, en devant subvenir aux besoins sociaux d'une façon intégrale.

- **Équité :** Les pouvoirs publics mèneront à bien, à travers les prestations, une politique de redistribution fondée sur des critères d'équité parmi les personnes et les groupes sociaux, en surmontant les différences de caractère personnel, social et territorial, en favorisant la cohésion et la justice sociale.

Pour terminer, en ce qui concerne l'existence de tarifs pour la prestation de services sociaux, il faut dire qu'à titre général dans les Communautés Autonomes certains taux et tarifs sont fixés pour la prestation de services tels que le logement dans une résidence pour personnes âgées, la révision de certains degrés de dépendance, handicap, etc. Chacune des Communautés Autonomes règle ces tarifs d'une façon indépendante, et celles-ci ont l'habitude de s'établir dans les lois régissant le budget annuel des Communautés Autonomes.

Par ailleurs, dans le contexte de crise économique, les Communautés Autonomes sont à légiférer le paiement partagé de certaines prestations dans le domaine des services sociaux dans quelques cas concrets.

- Il n'est pas défini clairement les conditions qui doivent accomplir les fournisseurs de services sociaux.

Bien qu'on n'ait été pas indiqué dans le 25ème Rapport de l'Espagne sur l'application de la Charte Sociale Européenne, toutes Communautés Autonomes dans leurs respectives législations de services sociaux, et dans quelques cas dans les règlements qui règlent les accréditations, les autorisations et registres de services et centres de services sociaux, établissent le cadre de collaboration des entités privées en tant que fournisseurs de services sociaux, tout en établissant les conditions qui doivent accomplir et les conditions où doivent se prêter les services.

Il n'y a pas, par conséquent, un seul cadre, puisque comme il est déjà indiqué précédemment celle-ci est une compétence exclusive des Communautés autonomes. Pour éviter les obstacles administratifs qui impliquent le besoin de registre, autorisation, etc., dans chacune des Communautés Autonomes pour pouvoir réaliser l'activité de services sociaux récemment on a adopté *la loi 20/2013, du 9 décembre, de garantie de l'unité de marché* (Journal Officiel du 10 décembre 2013).

La norme, consacrée à assurer la libre circulation des biens et des services sur l'ensemble du territoire national, est inspirée du principe de licence unique et législation d'origine, qui fonctionnent déjà dans le Marché Unique européen. De cette façon, tout produit ou service produit sous la protection de toute réglementation autonome pourra être offert sur l'ensemble du territoire national sans besoin de formalité additionnelle.

Par ailleurs, dans le **Catalogue de Référence de Services Sociaux** de 2013 déjà mentionné, on règle comme principes inspirateurs qui orienteront les prestations et les services du Système Public des Services Sociaux, les principes suivants :

- **Responsabilité publique :** « Les pouvoirs publics doivent faciliter la disponibilité et l'accès aux prestations à toutes les personnes, par leur réglementation et aménagement, en fournissant les moyens humains, techniques et financiers nécessaires pour leur fonctionnement ».

- **Participation :** « Les pouvoirs publics encourageront et assureront la participation… des entités du troisième secteur d'action sociale…, dans les processus de planification, développement, suivi et évaluation ».

- **Coopération et collaboration :** « Les pouvoirs publics agiront conformément aux principes de coopération et de collaboration parmi administrations publiques et avec l'initiative privée, en encourageant les actions nécessaires favorisant ces principes ».

- Il n'est pas établi l'existence de mesures de contrôle garantissant que les fournisseurs de services sociaux remplissent les conditions précises pour garantir la qualité de ces services.

Bien que n'ait pas été indiqué dans le 25ème Rapport de l'Espagne sur l'application de la Charte Sociale Européenne, la presque totalité des Communautés Autonomes dans leurs lois de services sociaux (les dénommées de deuxième et de troisième génération) reconnaissent l'importance de la qualité en services sociaux avec une double approche : d'un côté, on reconnaît comme un objectif prioritaire ou principe directeur du Système Public de Services Sociaux, et, d'un autre côté, on crée des structures comme Plans de qualité en services sociaux dans quelques Communautés Autonomes, par exemple la Catalogne avec le Plan de qualité des services sociaux 2010-2013, et Navarre avec le I Plan de qualité des Services Sociaux 2010-2013. Ou bien, on crée des cadres globaux de la qualité comme Aragon avec la Loi 5/2013, du 20 juin, de qualité des Services Publics de l'Administration.

Dans le **Catalogue de Référence de Services Sociaux** de 2013, un des principes inspirateurs qui orienteront les prestations et les services du Système Public des Services Sociaux, est le principe de qualité, de sorte qu'on cherche garantir l'existence de des normes minimes et appropriées de qualité pour l'ensemble des prestations, y compris instruments d'évaluation l'encourageant, et en ayant comme axe la notion de qualité de vie des personnes, l'efficacité et l'efficience des actions ainsi que l'éthique de l'intervention, dans le but dernier de l'amélioration continue du Système Public des Services Sociaux.

De même, le Catalogue réserve un paragraphe spécifique pour les critères communs de qualité qui adoptent le double cadre : le cadre européen et le cadre propre du système public des services sociaux. Dans ce paragraphe spécifique on recueille les suivants aspects :

- Principes généraux de qualité pour l'approvisionnement des services sociaux dans l'Union Européenne.

- Critères communs de qualité dans la prestation des services dans le cadre du système public des services sociaux, qui recueille 4 domaines : qualité technique et de gestion, innovation sociale et technologique, qualité dans l'emploi et qualité des services.

Article 14§2 - Public participation in the establishment and maintenance of social services

ESC 14§2 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 14§2 of the 1961 Charter on the ground that it has not been established that monitoring arrangements for guaranteeing the quality of the social services supplied by providers do exist.

179. Additional information is to be provided in the next National Report.

ESC 14§2 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 14§2 of the 1961 Charter on the grounds that it has not been established that:

- *that there are means of monitoring the actions of non-governmental organisations and other non-public service providers;*
- *that there is equal and effective access to social services provided by non-governmental organisations and other non-public service providers.*

180. The representative of Spain provided the following information in writing:

On fait les suivantes observations en ce qui concerne les éléments de non-conformité posés par le Comité :

- Il n'est pas été établi lesquels sont les moyens existants pour surveiller les actions des organisations non gouvernementales et d'autres fournisseurs privés.

En ce qui concerne les Organisations non Gouvernementales (ONG) qui ont été financées par l'intermédiaire de la convocation annuelle de subventions pour la réalisation de programmes de coopération et de volontariat sociaux imputés à une allocation fiscale de l'Impôt sur le Revenu des Personnes Physiques, ou IRPF, et de la convocation annuelle de subventions soumises au régime général de subventions, du Secrétariat d'État des Services Sociaux et Égalité, l'Administration Générale de l'État si établit un contrôle et une surveillance des actions.

Ainsi, par exemple, on effectue d'actions de vérification et de contrôle de l'application des fonds reçus par l'organe qui accorde et, le cas échéant, des actions de contrôle financier qui appartient à l'Intervention Générale de l'Administration de l'État et de celles prévues dans la législation de la cour des comptes en ce qui concerne les subventions accordées ; également on établit le contrôle, le suivi et l'évaluation des subventions à ONG (Articles 15 et 16 du Décret Royal 536/2013, du 12 juillet, en vertu duquel on établit les bases régulatrices des subventions de l'état consacrées à la réalisation de programmes d'intérêt général imputés à l'allocation fiscale de l'Impôt sur le Revenu des Personnes Physiques dans le domaine du Secrétariat d'État des Services Sociaux et Égalité, Journal Officiel du 13 juillet 2013).

- Il n'est pas été établi si l'accès équitable et effectif aux services sociaux fournis par les organisations non gouvernementales et d'autres fournisseurs privés est garanti.

Comme il est déjà indiqué dans le paragraphe concernant l'article 14.1, dans toutes les Communautés Autonomes et villes autonomes de Ceuta et Melilla est établi l'accès effectif, sans discrimination, aux services sociaux comme un droit subjectif de tous les citoyens. En outre, de ce qui est indiqué dans les principes inspirateurs des lois des services sociaux et les principes d'orientation du Catalogue de Référence de Services Sociaux. Et ce droit à accéder d'une façon effective et en situation d'égalité agit tant pour les fournisseurs des services sociaux, qu'ils soient publics ou privés.

En matière de volontariat actuellement on dispose de deux sources principales d'information qui apportent des données sur volontariat en Espagne. Les données obtenues de chacune d'entre elles ne sont pas directement comparables, étant donné que chacune part de différents critères méthodologiques et conceptuels :

- Annuaire du Troisième Secteur d'Action Sociale en Espagne. Fondation Luis Vives (2012) Données de 2010

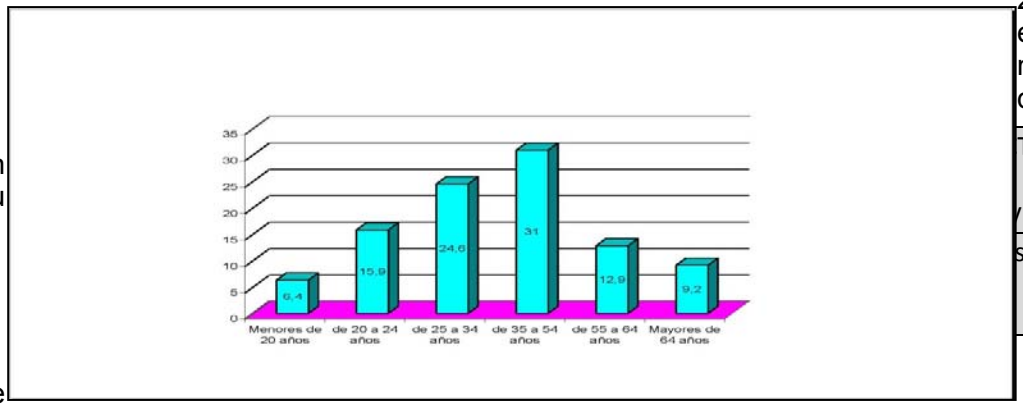
- Baromètre du Centre des Recherches Sociologiques (CIS) du mois de mars 2011. Étude nº 2.864. Données de 2011

NOMBRE DE PERSONNES VOLONTAIRES

Population qui affirme n'avoir pas effectué un travail volontaire jamais : un 69%.
Population qui affirme avoir effectué volontariat dans quelque occasion : un 31%.

Source : Élaboration propre sur la base des données du CIS

L'Annuaire du Troisième Secteur élaboré par la Fondation Luis Vives, fruit d'une recherche effectuée entre 2010 et 2012, englobe exclusivement le volontariat d'Action Sociale intégré entités du Troisième Secteur d'Action Sociale. L'univers final de référence estime qu'il y a un total de 29.746 entités du Troisième Secteur d'Action Sociale, sur lesquelles on a obtenu des données des personnes volontaires.



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DISTRIBUTION PAR GROUPE D'ÂGE (ANNUAIRE)[12]

[10] Selon les données de population de l'INE de l'année 2010. Personnes âgées de 18 ans.

Commentaire : Le groupe de personnes volontaires jeunes, de moins de 34 ans, est le groupe majoritaire avec le 46,9% ; le groupe de 35 à 64 ans représente le 43,9%. On commence à avoir une certaine représentativité les personnes volontaires âgées de moins de 20 ans (6,4%) et celle des volontaires de 64 ans, avec le 9,2%.

DISTRIBUTION PAR SEXE

Sexe	Estimation du nombre de personnes volontaires annuaire	% Annuaire	%CIS
Hommes	382.847	35,6%	48,9%
Femmes	692.567	64,4%	51,1%
Total	**1.075.414**	**100%**	**100%**

L'Institut des Personnes Âgées et Services Sociaux (IMSERSO) fait les suivantes observations en ce qui concerne les éléments de non-conformité posés par le Comité :

- Le Comité observe que l'âge ne figure pas explicitement dans l'article 14 de la Constitution Espagnole entre les motifs interdits de discrimination.

La Constitution ne cite pas d'une façon expresse dans l'article 14 l'âge comme un critère d'interdiction de discrimination. Néanmoins, la jurisprudence réitérée de la Cour Constitutionnelle a interprété que l'âge fait partie de « toute autre condition ou circonstance personnelle ou sociale » à laquelle fait allusion le mentionné article 14 : « L'âge n'est pas des circonstances énoncées réglementairement dans l'article 14, mais on ne doit pas voir ici une intention de normalisation fermée excluant toute autre de celles précisées dans le texte légal, parce que dans la formule du mentionné précepte on fait allusion à toute autre condition ou circonstance personnelle ou sociale, caractère de circonstance personnelle qui doit se prédiquer de l'âge » (Arrêt de la Cour Constitutionnelle 75/1983, du 3 août). Dans le même sens, et avec la même diction littérale, on peut voir, entre d'autres, l'Arrêt de la Cour Constitutionnelle 31/1984, du 7 mars, l'Arrêt de la Cour Constitutionnelle 69/1991, du 8 avril, l'Arrêt de la Cour Constitutionnelle 37/2004, du 11 mars, l'Arrêt de la Cour Constitutionnelle 63/2011, du 16 mars, l'Arrêt de la Cour Constitutionnelle 79/2011, du 6 juin et l'Arrêt de la Cour Constitutionnelle 117/2011, du 4 juillet.

La Direction Générale d'Égalité des Chances fait les suivantes observations en ce qui concerne les éléments de non-conformité posés par le Comité :

En ce qui concerne le domaine du travail la Loi 62/2003, du 30 décembre, de mesures fiscales, administratives et de l'Ordre Social, qui est venue à transposer à l'ordre juridique espagnol, la Directive 2000/78/CE du Conseil, du 27 novembre 2000, concernant l'établissement d'un cadre général pour l'égalité de traitement dans l'emploi et l'occupation, interdit d'une façon expresse la discrimination et le harcèlement pour âge dans le domaine de l'emploi. Ce mandat, est articulé en Espagne à travers l'introduction dans différents textes réglementaires d'une référence expresse à cette interdiction :

- **Alinéa c) du paragraphe 2 de l'article 4 du texte refondu de la Loi du Statut des Travailleurs :**

« c) À ne pas être discriminés directe ou indirectement pour l'emploi, ou une fois employés, en raison de sexe, état civil, âge dans les limites indiquées par cette loi, origine raciale ou ethnique, condition sociale, religion ou convictions, idées politiques, orientation sexuelle, affiliation ou non à un syndicat, ainsi qu'en raison de langue, dans l'État espagnol ».

- **Alinéa e) du paragraphe 2 de l'article 4 du texte refondu de la Loi du Statut des Travailleurs :**

« e) Au respect de son intimité et à l'égard dû à sa dignité, y compris la protection face à offenses verbales et physiques de nature sexuelle et face au harcèlement en raison d'origine raciale ou ethnique, religion ou convictions, handicap, âge ou orientation sexuelle ».

- **Paragraphe 2 de l'article 16 du texte refondu de la Loi du Statut des Travailleurs :**

« 2. Il est interdit l'existence d'agences de placement à des fins lucratifs. Le service public d'emploi pourra autoriser, dans les conditions qui soient déterminées dans la correspondante convention de collaboration et avis préalable du Conseil Général de l'Institut National de l'Emploi, l'existence d'agences de placement sans fins lucratifs, à la condition que la rémunération qu'elles reçoivent de l'employeur ou du travailleur se limite exclusivement aux frais découlant des services prêtés. Ces agences doivent garantir, dans leur domaine d'action, le principe d'égalité dans l'accès à l'emploi, en ne pouvant établir aucune discrimination fondée sur motifs d'origine, y compris l'origine raciale ou ethnique, sexe, âge, état civil, religion ou convictions, opinion politique, orientation sexuelle, affiliation syndicale, condition sociale, langue dans l'État et handicap, à la condition que les travailleurs se trouveraient en conditions d'aptitude pour exercer le travail ou l'emploi en question ».

- **Paragraphe 1 de l'article 17 du texte refondu de la Loi du Statut des Travailleurs :**

« 1. On entendra nuls et sans effet les préceptes réglementaires, les clauses des conventions collectifs, les pactes individuels et les décisions unilatérales de l'employeur comprenant des discriminations directes ou indirectes défavorables en raison d'âge ou handicap ou favorables ou adverses dans l'emploi, ainsi qu'en matière de rémunérations, journée et d'autres conditions de travail par circonstances de sexe, origine, y compris l'origine raciale ou ethnique, état civil, condition sociale, religion ou convictions, idées politiques, orientation sexuelle, affiliation ou non à des syndicats et à leurs accords, liens de parenté avec d'autres travailleurs dans l'entreprise et langue dans l'État espagnol.

Elles seront également nulles les décisions de l'employeur impliquant un traitement défavorable des travailleurs comme réaction devant une réclamation effectuée dans l'entreprise ou devant une action judiciaire destinée à exiger l'application du principe d'égalité de traitement et non discrimination ».

- **Alinéa g) dans le paragraphe 2 de l'article 54 du texte refondu de la Loi du Statut des travailleurs,** comprend comme motif de licenciement disciplinaire :

« Le harcèlement en raison d'origine raciale ou ethnique, religion ou convictions, handicap, âge ou orientation sexuelle à l'employeur ou aux personnes qui travaillent dans l'entreprise ».

D'autre part, l'alinéa c) du paragraphe 1 de l'article 3 de la Loi 45/1999, du 29 novembre, sur le déplacement de travailleurs dans le cadre d'une prestation de services transnationale, comprend parmi conditions de travail prévues par la législation du travail espagnole relatives à qui doivent respecter les employeurs qui déplacent à l'Espagne leurs travailleurs dans le cadre d'une prestation de services transnationale celles concernant :

« c) L'égalité de traitement et la non discrimination directe ou indirecte en raison de sexe, origine, y compris l'origine raciale ou ethnique, état civil, âge dans les limites légalement marquées, condition sociale, religion ou convictions, idées politiques, orientation sexuelle, affiliation ou non à un syndicat et à ses accords, liens de parenté avec d'autres travailleurs dans l'entreprise, langue ou handicap, à la condition que les travailleurs se trouveraient en condition d'aptitude pour exercer le travail ou l'emploi en question ».

Enfin, la Loi sur Infractions et Sanctions dans l'Ordre Social, adoptée par le Décret-législatif Royal 5/2000, du 4 août, envisage comme d'infractions de l'ordre social :

« 12. Les décisions unilatérales de l'employeur impliquant discriminations directes ou indirectes défavorables en raison de sexe ou handicap ou favorables ou adverses en matière de rémunérations, journées, formation, le harcèlement pour motifs d'âge et l'établissement de conditions discriminatoires pour l'accès à l'emploi pour motifs, entre d'autres, d'âge.

Outre ces interdictions empressées dans le domaine du travail on doit souligner qu'il y a en Espagne diverses normes, qui ont pour but faciliter la participation et l'intégration dans la vie sociale des personnes, tant des jeunes que plus âgés

ARTICLE 4 OF THE 1988 ADDITIONAL PROTOCOL - RIGHT OF THE ELDERLY TO SOCIAL PROTECTION

ESC 4 1988 ADDITIONAL PROTOCOL CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4 of the Additional Protocol to the 1961 Charter on the grounds that:

- *the level of the minimum pension is manifestly inadequate;*
- *during the reference period there was no legislation prohibiting discrimination on grounds of age outside of employment.*

181. The representative of Czech Republic provided the following information in writing:

The Defender approves a plan to what type (types) of a facility he will perform systematic visits within a certain period. The plan is compiled and specific facilities selected based on, for example, earlier practice of the Defender, information acquired from the public or persons placed in facilities or on the basis of the outcome of activities of other control mechanisms. The Defender also takes into account various promoters, the location of facilities (whole territory of the Czech Republic), different sizes of facilities etc. so that the findings give the most comprehensive picture possible about the situation in the given type of a facility.

The plan is usually prepared for one year; however, the other facilities whose visitation is justified by a contemporary significant event can be added to the plan on *ad hoc* basis. Significant events include, for example, legislative changes or information constituting a justified suspicion that ill-treatment may be taking place in the given facility.

Procedurally, a systematic visit may be divided in three phases: preparation of the visit, execution of the visit and the processing of acquired information resulting in the issuance of a report on the visit to the facility.

Preparation

During the preparation of a visit, information about the given type of a facility is gathered, with respect to legislation, be it national or international, including non-binding recommendations, declarations, non-legal standards, judicial decisions of the European Court of Human Rights, or internal rules issued by the relevant department. After the acquired information has been processed, the methodology of the visit itself is prepared. The methodology is divided up into basic areas and goals that the visit should cover (e.g. free movement, dignity, privacy, autonomy of will, health care, cultural and social needs, right to make a complaint etc.). A set of questions is drawn up in respect of each area, to be put to the staff of the facility and to the persons confined in the facility.

Visits are performed unannounced, and if the head of a facility is not present, he or she is notified of the start of the visit by phone. If a visit is being made to a facility which has not come into contact with the Defender yet, it has proven effective to notify the facility of the unannounced visit by presenting a personal letter of the Defender at the beginning of the visit. In a letter to the director or the head of a facility, the Defender explains what his task is, how the visit will proceed, what its outcome will be etc.

Course of visits

The course of a visit depends on the size and the division of a facility. Visits last between one and three days and involve three to five employees of the Office, and sometimes the Defender himself. Visits to, for example, police cells take place also early in the morning or late at night. Experts in the given areas (e.g. a doctor, a nurse, a special pedagogue, an inspector of the quality of social services and so no) are invited to participate on an ad hoc basis. During a visit, the employees of the Office have the right to enter all areas, the right to speak with anyone privately, the right to examine all files (including medical files, on the basis of the provision of Sec 65 of Act No. 372/2011 Coll., regulating Health Services and the Terms and Conditions for the Providing of such Services, as amended) and make extracts and copies.

After arriving at a facility, a quick initial interview with the head of a facility takes place. Following that, employees of the Office conduct a survey of the facility and take photographs as soon as possible. During the survey, informal contact with confined persons is established depending on circumstances. During the visit, attention is paid to how well the facility is equipped, to the degree of privacy afforded to persons (privacy related to accommodation in rooms as well as privacy during performance of personal hygiene and other needs), whether the facility is fitted with certain specific structural elements (such as metal bars) or audiovisual equipment, whether there are any visible elements that could potentially limit the personal freedom of confined persons (such as round door knobs, disabled access on the premises in the case of persons with disability), the level of hygiene and so on. Additionally, it is also important to observe what condition the confined persons are in and what activities are being performed by the staff.

Further, the visit involves examining files (personal files of clients, social files, medical records, entries recorded by staff in shift reports, the internal rules and rules governing stays, etc.) and interviewing facility staff who participate in the running of the specific facility (the management, members of the Prison Service, social workers, doctors and other medical personnel, direct care workers, chaplains etc.). Interviews are conducted with persons limited in their freedom (prisoners, clients in social services, patients etc.), on the basis of selection by employees of the Office. The original method of drawing lots was soon abandoned in favour of selection according to certain critical moments, which can be evaluated on the basis of observance, previous examination of files or informal claims. This process ensures that interviews are conducted with all groups of confined persons in order to be able to respond flexibly even to an informal internal structure. It has been also proven effective to verify facts learnt during the examination of files by means of a few interviews to acquire facts that are supported by multiple sources. If circumstances so allow (health condition of persons), interviews take place without the presence of other persons.

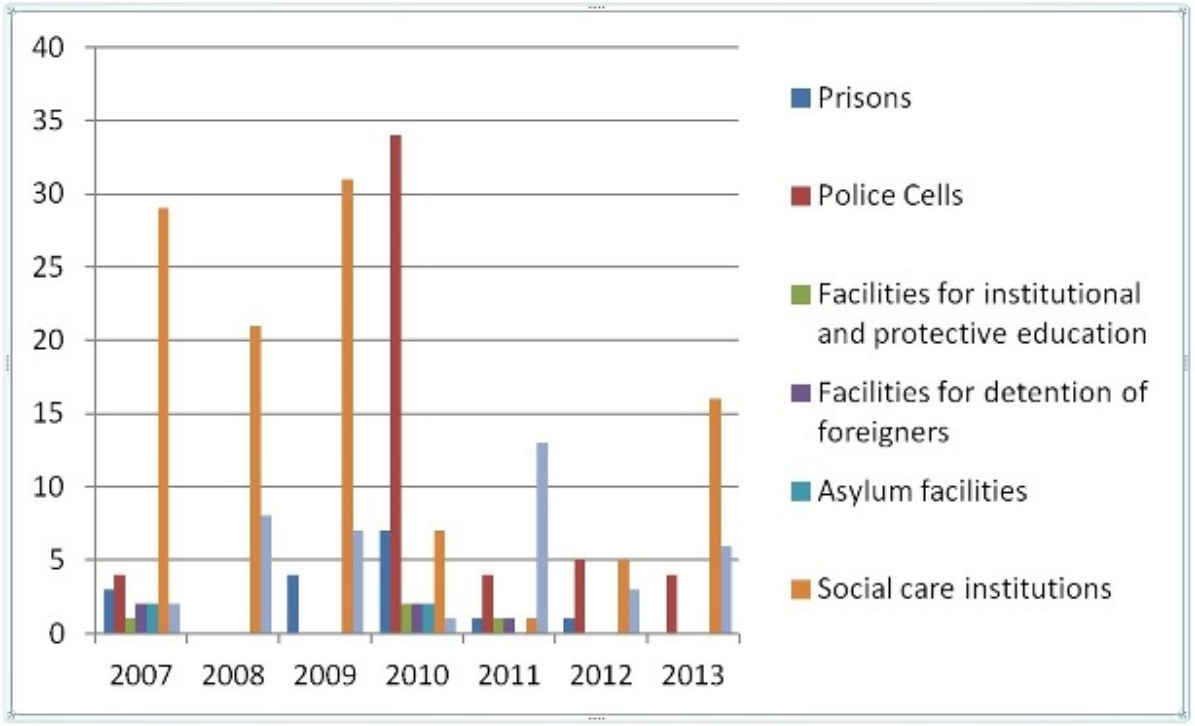
Before the visit is completed, preliminary findings of employees of the Office are discussed in some cases with the head of the facility and information acquired during the visit is specified with an aim to reproach the facility for possible maladministration which is so serious that it must be addressed before the Defender's report is delivered.

Number of performed visits to detention facilities

Year	2007	2008	2009	2010	2011	2012	2013
Number of visits	43	29	42	55	44	32	29

Types of facilities

	2007	2008	2009	2010	2011	2012	2013
Prisons	3	0	4	7	1	1	0
Police Cells	4	0	0	31	4	5	4
Facilities for institutional and protective education	1	0	0	2	24	18	3
Facilities for detention of foreigners	2	0	0	2	1	0	0
Asylum facilities	2	0	0	2	0	0	0
Social care institutions	29	21	31	7	1	5	16
Healthcare facilities	2	8	7	1	13	3	6



In September 1, 2009, the Act No 198/2009 Coll., regulating Equal Treatment and Legal Means of Protection against Discrimination and Amendment to Some Laws (the Anti-Discrimination Act) was

adopted. The act in Section 2 prohibits discrimination on the ground of age outside of employment, stipulating:

„(3) Direct discrimination shall mean an act, including omission, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions."

ESC 4 1988 ADDITIONAL PROTOCOL DENMARK

The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol of the 1961 Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

182. The representative from Denmark informed that the principle of non discrimination is a basic element of public law in Denmark. This means that public authorities must not discriminate because of age or any other contingency in matters of social security and social assistance. The national legislation contains general provisions to combat discrimination outside the labour market. Different social benefits/services such as rehabilitation, training and home help are always allocated according to need, not age, and based on individual assessment carried out by the local municipalities/local council.

183. The representative from Denmark added that there are measures carried out because of age, i.e. preventive home visits to all citizens over 75 years of age in which case a need may be ascertained. Services such as home help (which is free of charge in almost all cases) may be carried out by municipal as well as private enterprises on the bases of an agreement between these enterprises and the local council. Both municipal and private services are subject to the same control and monitoring. Any complaints about the service level and local activities may be filed with the municipal council – the body having the political responsibility. Complaints against decisions made by the municipal council may be filed with the National Complaints board after consultation with the local council. The same conditions apply to both municipal and private measures.

184. The representative from Denmark concluded that no legislation is in the pipeline on age-discrimination as Denmark does not wish to legislate in respect of a particular age group but in respect of factors that may affect at random. Lack of legislation on age-discrimination should not give rise to concern on the part of the ECSR as general provision assure that older people in Denmark may live a fully participating life - which is the real objective of Article 23.
185. The Chair noted that it was not possible to legislate on every particular group but that the elderly are a special group that is the subject of interest from several international bodies.
186. The Governmental Committee took note of the information provided by Denmark and decided to await the next assessment of the ECSR.

ESC 4 1988 ADDITIONAL GREECE

The Committee concludes that the situation in Greece is not inconformity with Article 4 of the Additional Protocol to the 1961 Charter on the grounds that there is no legislation protecting elderly persons against discriminationon grounds of age outside the employment field.

187. The representative of Greece provided information on the antidiscrimination legal framework in force in the country:
- a general constitutional protection of the principle of equality (Article 4 of the Constitution);

– Law 3304/2005 which embodies the two directives of the European Council in the field of fight against discrimination: the fight against discrimination of racial or ethnic origin and general framework for equal treatment in employment and occupation, including the prohibition of discrimination based on age.
– The representative of Greece added that Article 16 of the above Law provides for criminal sanctions for refusal to supply goods or services by a professional because of age, thus protecting elderly persons against discrimination outside the employment field. Furthermore, the Law 3500/2006 on domestic violence applies, among others, to the elderly people. Finally, Greece fully supports the proposal of the European Commission for a directive covering equal treatment, including the elderly, outside the field of employment.

188. In response to the question by the Chair, the representative of Greece confirmed that there is no special legislation protecting elderly persons against discrimination on grounds of age outside the employment field.

189. The Committee took note of the information provided; it encouraged Greece to include more detailed information in the new report and decided to await the next assessment of the ECSR.

ESC 4 1988 ADDITIONAL PROTOCOL SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol of the 1961 Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

190. The representative of Spain provided the following information in writing:

En ce qui concerne cet article, le Comité requiert l'Espagne pour qu'on fournit les donnés sur les services d'assistance de santé pour les personnes âgées, dans le but de disposer d'information mise à jour sur ce sujet.

En particulier on demande information sur le pourcentage de la dépense pharmaceutique consacrée à personnes âgées, des donnés sur l'existence de services de premiers soins adressés spécifiquement au troisième âge et à l'existence de programmes ou directives sur assistance sanitaire pour personnes âgées, en comprenant des programmes de santé mentale et psychologique par rapport aux soins palliatifs, et le besoin d'établir des programmes de formation spéciale pour les personnes qui s'occupent des personnes âgées.

En donnant réponse aux demandes du Comité, d'une façon préliminaire on doit remarquer qu'en Espagne la prestation d'assistance sanitaire n'établit pas du tout des critères de discrimination en fonction de l'âge.

Les personnes ont droit à l'assistance de laquelle ont besoin, indépendamment de la tranche d'âge à laquelle appartiennent. En ce sens, les personnes âgées reçoivent toute l'assistance médicale nécessaire tant dans les services de premiers soins que dans les services d'assistance spécialisée et urgente, comme l'on détaille plus loin. Outre cela, il y a des programmes de premiers soins notamment configurés pour personnes âgées (par exemple, ce groupe de personnes âgées de 65 ans est considéré population cible pour programmes préventifs comme la vaccination antigrippale, pour mettre un exemple). Et il y a aussi d'unités d'assistance spécialisée en gériatrie subvenant aux spéciaux besoins sanitaires des personnes âgées.

Dit ce qui précède, il faut ajouter que le pourcentage qui représente la contribution des personnes âgées dans la dépense pharmaceutique est zéro, dans la période temporelle de référence (2008-2011).

On mets en évidence, par ailleurs, que selon les données découlant du Groupe de Travail d'Analyse de Dépense Sanitaire (données plus proches du domaine temporel de l'analyse de l'OCDE, publiées en septembre 2007), la dépense correspondante aux personnes de 65 ans ou plus âgées, face aux personnes de moins de 65 ans, est en moyenne 3,462 fois supérieure, ce qui fait qu'on peut dire que les personnes âgées sont un objectif stratégique pour le Système National de la Santé. Le rapport peut être consulté en : http://www.minhap.gob.es/Documentacion/Publico/PortalVarios/Grupo%20de%20Trabajo%20Gasto%20Sanitario.pdf

Un indicateur important pour déterminer le degré d'assistance qui reçoivent les personnes âgées est sans aucun doute l'**espérance de vie.** L'espérance de vie au moment de naître en Espagne (nombre d'années qui peut attendre vivre en moyenne une personne au moment de sa naissance –si l'on maintient les taux actuels spécifiques de mortalité par âge-), est située en 82,3 ans (70,3 dans le cas des hommes et 85,3 pour les femmes (données correspondantes à l'année 2011).

Les personnes qui arrivent à 65 ans, il faut attendre qu'elles vivent d'autres 20,9 ans plus en moyenne, 22,9 si sont des femmes et 18,7 s'il s'agit des hommes (espérance de vie aux 65 ans). L'Espagne figure comme l'un des pays avec les plus hautes espérances de vie, en occupant le troisième poste de l'Union Européenne, après la France et l'Italie.

L'espérance de vie avec bonne santé est de 64,8 pour les hommes et de 65,7 pour les femmes ; cette espérance de vie est au-dessus de la moyenne européenne (61,3 pour les hommes et 61,9 pour les femmes).

Une autre donnée à être prise en considération est la perception que les personnes âgées ont sur leur état de santé. En analysant l'**autoévaluation de l'état de santé**, on observe comment les personnes âgées de 65 ans en Espagne ont, en général, une bonne perception de leur santé, un 44,2% la considèrent bonne ou très bonne :

	TRÈS BONNE	BONNE	RÉGULIÈRE	MAUVAISE	TRÈS MAUVAISE
LES DEUX SEXES					
TOTAL	26,5	48,8	18,0	5,4	1,3
DE 65 à 74 ANS	8,1	45,9	31,2	12,4	2,5
DE 75 à 84 ANS	5,3	30,4	41,0	18,4	4,9
DE 85 et PLUS D'ANS	3,5	26,6	40,7	21,0	8,2
DE 65 Y et PLUS D'ANS	**6,5**	**37,7**	**36,1**	**15,7**	**4,1**
HOMMES	7,0	44,0	32,8	13,2	3,1
FEMMES	6,0	33,0	38,6	17,6	4,8

En ce qui concerne **l'utilisation de services du côté des personnes âgées,** selon les données enregistrées du Système d'Information des Premiers Soins, le 30% des consultations médicales et le 42% de celles d'infirmerie des premiers soins, s'occupent de personnes de 65 ans et plus âgées.

En ce qui concerne la fréquence moyenne aux médecins des premiers soins présente un modèle élevé dans les premiers années de vie (parmi ceux de 0 à 4 ans, est de 8,33 consultations pour enfant et an), cette donnée diminue jusqu'à 2,72 pendant l'adolescence (15 à 19 ans), groupe d'âge qui a la fréquence la plus basse et s'élève postérieurement d'une façon très lente jusqu'à 45 ans, à partir desquels augmente très clairement, en atteignant le pic le plus haut de fréquence le groupe de 80-84 ans, avec une moyenne de 11,23 visites par an.

En infirmerie des premiers soins, la fréquence suit un modèle similaire selon l'âge, en atteignant la plus grande fréquence le groupe d'âge de 80-84 ans, avec 9,54 consultations par personne et an, mais presque ensemble avec ceux de 85 à 89 ans, avec 9,46.

Le besoin d'assistance de ces personnes à domicile pour la part des premiers soins montre comment cette activité se concentre dans les personnes âgées de 65 ans. Le 83% du total des visites à domicile effectuées par médecins et le 86% des effectuées par infirmerie sont à des personnes âgées de 65 ans. En infirmerie, les consultations à domicile représentent le 12% du total de son activité, avec un volume de 9.653.997 visites à domicile effectuées en 2012.

En ce qui concerne l'hospitalisation, les données tirées du registre des sorties (CMBD) de 2011, on observe comment la fréquence augmente avec l'âge, à l'exception de la casuistique concernant l'assistance à la grossesse, accouchement et suites de couches en femmes de 20 à 44 ans – en étant la fréquence maximale en hommes dans le groupe d'âge de 70 à 74 ans et en femmes de 80 à 84.

Dans une approche générale, le 43% des personnes hospitalisées ont plus de 65 ans et le 28% plus de 75 ans. Dans les derniers 15 ans, a doublé le nombre des personnes avec plus de 74 ans qui entrent à l'hôpital dans une année. Le 38% des cas ambulatoires assistés dans les hôpitaux ont plus de 65 ans.

En analysant les causes les plus fréquentes qui donnent lieu à cette hospitalisation, les quinze causes les plus fréquentes impliquent le 62% des cas assistés en ces personnes (64% hommes et 61% en femmes). Ces causes englobent, fondamentalement, pathologies chroniques et complications concernant celle-ci, interventions pour arthropathies dégénératives et lésions (plus fréquentes en femmes) et néoplasies (plus fréquentes en hommes).

En personnes âgées de 75 ans, quinze causes de plus impliquent le 65% de toutes les hospitalisations. Il faut souligner aussi dans ce groupe d'âge en premières positions les pathologies chroniques et problèmes concernant celles-ci, bien que la fréquence d'hospitalisation pour lésions soit plus grande, notamment en femmes, et on apparaît des cas de complications concernant l'assistance médicale comme cause d'hospitalisation en s'ajoutant aux cas d'hospitalisations évitables.

Les coûts de l'hospitalisation de personnes de 65 ans et plus âgées dans le SNS sont estimés en 9.000 millions d'euros (presque la moitié du total des coûts d'hospitalisation), tandis que le nombre des cas à peine dépasse le 43%. Le 30% du coût de l'hospitalisation, appartient à personnes âgées de 75 ans. Le coût moyen est de 5.699 euros tandis que le coût moyen global est de 5.114 euros selon les estimations préliminaires des données de coût effectuées sur la base de la dépense réelle d'hôpitaux pour cette année notifié par l'intermédiaire de Systèmes d'Information d'Assistance Spécialisée.

Enfin, tout en analysant les **causes de mort,** un peu plus des deux tierces parties des décès en personnes âgées de 65 ans en Espagne sont dus aux maladies de l'appareil circulatoire, au cancer et aux maladies de l'appareil respiratoire.

Concrètement, les décès pour maladies de l'appareil circulatoire représentent le 33%, les décès pour cancer représentent le 24% et les décès pour maladies de l'appareil respiratoire représentent le 12%. Ces trois causes de mort constituent aussi la première cause de mort en femmes et en hommes, bien qu'en hommes le pourcentage de décès pour maladies de l'appareil circulatoire est similaire au pourcentage de décès pour cancer : environ 30%.

L'Institut des Personnes Âgées et Services Sociaux (IMSERSO) fait les suivantes observations concernant les éléments de non-conformité posés par le Comité :

- Le Comité croit que la situation n'est pas conforme à l'Article 4 du Protocole Additionnel dans les domaines où n'a pas été établi qu'il y a une législation qui protège les personnes âgées face à la discrimination en raison d'âge.

L'État espagnol est dans l'attente que l'Union Européenne adopte la proposition de Directive dont l'objet est celui d'établir un cadre général pour lutter contre la discrimination pour motifs de religion ou convictions, handicap, âge ou orientation sexuelle, dans le but que dans les États membres le principe d'égalité de traitement en domaines différents de l'emploi soit appliqué, et l'occupation, des domaines déjà visés dans la Directive 2000/78/CE.

Cette proposition de Directive essaie de mettre en œuvre le principe d'égalité de traitement en dehors du contexte du travail. Son domaine d'application s'étend à toutes les personnes, tant du secteur public que du secteur privé, y compris les organismes publics, par rapport à la protection sociale, y compris la sécurité sociale et l'assistance sanitaire, les avantages sociaux, l'éducation, et l'accès et approvisionnement des biens et d'autres services à la disposition de la population, y compris le logement. (Veuillez voir Commission Européenne : Proposition de Directive du Conseil, en vertu de laquelle on applique le principe d'égalité de traitement entre les personnes indépendamment leur religion ou convictions, handicap, âge ou orientation sexuelle, COM(2008) 426 final. Bruxelles, 2 juillet 2008).

- Le Comité demande aussi information sur si l'introduction de procédures concernant l'assistance dans la prise de décisions pour les personnes âgées a été prise en considération

Sur les procédures concernant l'assistance dans la prise des décisions pour les personnes âgées il faut manifester ce qui suit :

Le Code Civil espagnol envisage l'institution juridique de la tutelle pour des cas de remplacement de la capacité d'agir établie par décision judiciaire (articles 222 à 285), la curatelle, pour des cas où le juge considère qu'il faut compléter la capacité d'agir (articles 286 à 298).

Le Code Civil prévoit aussi l'existence d'un défenseur judiciaire qui représente et protège les intérêts des personnes handicapées judiciairement lorsqu'il y a conflit d'intérêts parmi les personnes handicapées et leurs représentants légaux ou le curateur et dans le cas où, pour toute raison, le tuteur ou le curateur n'exercent pas leurs fonctions (articles 299 à 302). Le Code Civil envisage aussi la figure du gardien de fait (articles 303 à 306).

Il faut dire, de même, que le Code Civil envisage la possibilité qu'une personne avec capacité d'agir suffisante puisse prendre des décisions d'avenir, y compris la désignation de tuteur, en prévision d'une éventuelle incapacité judiciaire : « toute personne avec la capacité d'agir suffisante, en prévision d'être déclarée incapable judiciairement à l'avenir, pourra en document public notarié adopter toute disposition concernant sa propre personne ou biens, y compris la désignation de tuteur » (article 2223, deuxième alinéa).

Les tuteurs ne sont seulement des personnes physiques. Ils peuvent l'être aussi les personnes juridiques. À ce sujet il faut remarquer que, dans les dernières années, les organismes publics autonomes avec fonctions de tutelle ont subi un essor important (l'Agence de Tutelle des Adultes de la Communauté de Madrid, par exemple) ou les fondations tutélaires de caractère privé.

La Loi 41/2002, du 14 novembre, de base régulatrice de l'autonomie du patient et de droits et d'obligations en matière d'information et documentation clinique, ainsi que les Lois autonomes de développement de la Loi de base précédente établit deux institutions juridiques qui sont liées directement à la prise de décisions des personnes âgées :

- Le consentement informé. Toute action dans le domaine de la santé d'un patient a besoin du consentement libre et volontaire de la personne touchée, une fois que, reçue l'information pertinente, ait évaluée les options propres du cas. Le consentement est verbal en règle générale. Néanmoins, on doit être prêté par écrit dans les cas d'intervention chirurgicale, procédés diagnostiques et thérapeutiques envahissants et, en général, mise en œuvre de procédés qui impliquent des risques ou inconvénients de notoire et prévisible conséquence négative sur la santé du patient. Tout patient ou usager a droit à être prévenu sur la possibilité d'utiliser les procédés de pronostic, diagnostic et thérapeutiques qui lui est appliqué dans un projet enseignant ou de recherche, qu'en aucun cas pourra comporter un risque additionnel pour sa santé. Le patient a droit à refuser du traitement, à l'exception des cas déterminés dans la Loi.

- Les instructions préalables. Ces instructions permettent de manifester à l'avance la volonté pour le cas de n'avoir pas de capacité de décision au moment où le besoin d'intervention soit posé. Il s'agit d'une modalité de mandat consacré à avoir de l'effet dans le domaine sanitaire. Par le document d'instructions préalables, une personne majeur, capable et libre, manifeste à l'avance sa volonté, dans le but que celle-ci soit appliquée au moment qu'il arrive à des situations auxquelles circonstances il ne soit pas capable de les manifester personnellement, sur les soins et le traitement de sa santé ou, une fois arrivé le décès, sur la destination de son corps ou des organes de celui-ci. Le concédant du document peut désigner, en outre, un représentant pour que, le cas échéant, sert comme son interlocuteur avec le médecin ou l'équipe sanitaire pour essayer de l'application des instructions préalables.

Le Comité demande dans le prochain rapport qu'on fournisse information détaillée sur le niveau des pensions non contributives ainsi qu'information sur tous les bénéfices/aides additionnelles auxquelles un bénéficiaire pourrait avoir droit.

PENSIONS NON CONTRIBUTIVES

- **INVALIDITÉ**

Requises :

- Être âgé de 18 ans et de moins de 65 ans à la date de la demande
- Résider légalement sur le territoire espagnol et l'avoir fait pendant 5 ans, desquels deux ans seront immédiatement précédents à la date de la demande

- Etre touché par un handicap ou maladie chronique dans un degré égal ou supérieur au 65%[13].
- Manquer des revenus ou recettes suffisants (voir les pages suivantes)

[13] Seulement à effets de la pension d'incapacité non contributive, on présumera que se trouve atteinte d'un degré d'incapacité égal au 65% aux personnes qui aient reconnue :

- Une incapacité en degré absolue.
- Une pension d'assistance pour maladie préalablement à l'entrée en vigueur du Décret Royal 357/1991, du 15 mars.
- Les personnes handicapées légalement.

Également on présumera que se trouve atteinte d'un degré de handicap égal au 75% et qu'elle a besoin du concours d'autre personne pour les actes essentiels de la vie à ceux qui auraient reconnu un handicap en degré de grande invalidité.

Montants	Annuel	Mensuel
Intégral	5.122,60	365,90
Minimum du 25%	1.280,65	91,48
Complément besoin d'autre personne	2.561,30	182,95
Intégral accru avec complément debesoin d'autre personne	7.683,90	548,85

- **RETRAITE**

Requises :

- Être âgé de 65 ans à la date de la demande
- Résider légalement sur le territoire espagnol et l'avoir fait pendant 10 ans, entre l'âge de 16 ans et l'âge de naissance de la pension, desquels deux devront être consécutifs et immédiatement précédents à la date de la demande.
- Manquer de revenus ou recettes suffisants (veuillez voir les pages suivantes)

Résumé d'application des pensions non contributives de la Sécurité Sociale de l'année 2014 :

Montants	Annuel	Mensuel
Intégral	5.122,60	365,90
Minimum du 25%	1.280,65	91,48

Manque de revenus ou recettes :

1er. On considère que l'intéressé manque des revenus ou recettes suffisants lorsque la somme, en computation annuelle, des recettes propres soit inférieure au montant aussi en computation annuelle, de la pension (5.122,60 euros)

2ème Néanmoins, si le demandeur manque des revenus ou recettes aux termes de l'alinéa précédent et se trouve inséré dans une unité de vie en commun, on entendra uniquement remplie la condition, lorsque la somme des revenus et des recettes de tous les membres de l'unité économique ne dépasse pas la limite de cumul des ressources établie conformément à la règle suivante :

C= Montant annuel de la pension ; m= Nombre des personnes qui vivent en commun.

Nº de personnes vivant en union de l' UE.C	L = C+ [0,7 C(m-1)]	Limites d'acccumulation de ressourcess de l' U.E.C
2	5.122,60 + 3.585,82	8.708,42
3	[5.122,60 + (3.585,82 x 2)]	12.294,24
4	[5.122,60 + (3.585,82 x 3)]	15.880,06
5	[5.122,60 + (3.585,82 x 4)]	19.465,88

6	[5.122,60 + (3.585,82 x 5)]	23.051,70
7	[5.122,60 + (3.585,82 x 6)]	26.637,52
8	[5.122,60 + (3.585,82 x 7)]	30.223,34
9	[5.122,60 + (3.585,82 x 8)]	33.809,16
10	[5.122,60 + (3.585,82 x 9)]	37.394,98

3ème. Si la vie commun a lieu entre le demandeur et ses descendants ou ascendants en premier degré, qu'ils les soient par consanguinité ou par adoption, la limite de cumul sera celle qui suit :

Nº de personnes vivant en union de l' UE.C	**L = C+[0,7 C(m-1)] x 2,5**	**Limites d'acccumulation de ressourcess de l' U.E.C**
2	5.122,60 + 3.585,82 x 2,5	21.771,05
3	[5.122,60 + (3.585,82 x 2)] x 2,5	30.735,60
4	[5.122,60 + (3.585,82 x 3)] x 2,5	39.700.15
5	[5.122,60 + (3.585,82 x 4)] x 2,5	48.664,70
6	[5.122,60 + (3.585,82 x 5)] x 2,5	57.629,25
7	[5.122,60 + (3.585,82 x 6)] x 2,5	66.593,80
8	[5.122,60 + (3.585,82 x 7)] x 2,5	75.558,35
9	[5.122,60 + (3.585,82 x 8)] x 2,5	84.522,90
10	[5.122,60 + (3.585,82 x 9)] x 2,5	93.487,45

NOTE EXPLICATIVE : Il y aura une unité économique dans tous les cas de vie en commun du bénéficiaire avec d'autres personnes unies avec celui-là pour mariage ou pour liens de parenté de consanguinité ou adoption jusqu'au deuxième degré. (Le parenté par consanguinité jusqu'au deuxième degré touche : parents, grands-parents, enfants, petits-enfants et frères du demandeur).

CALCUL DES MONTANTS :

Reconnu le droit à pension non contributive le montant sera établi en fonction des règles suivantes :

- Bénéficiaire non inséré dans une unité économique de vie en commun

1er. Le montant de la pension non contributive sera établi en son montant annuel, dans la Loi du Budget de l'État (5.122,60 euros).

2ème. Dans le cas où le bénéficiaire dispose de revenus ou de recettes propres supérieurs au 35% du montant annuel fixé pour la pension non contributive, le montant de la pension indiquée dans l'alinéa précédent, sera réduit d'un montant égal au montant où les revenus personnels, en computation annuelle, dépassent le pourcentage indiqué.

3ème. Malgré la réduction effectuée conformément aux revenus ou recettes du bénéficiaire, la pension à reconnaître sera au moins le 25% du montant de la pension établie dans la Loi du Budget de l'État (1.280,65 euros).

- Bénéficiaire inséré dans une unité économique de vie en commun

1er. Le montant de la pension non contributive est établi en son montant annuel, dans la Loi du Budget de l'État (5.122,60 euros).

2ème. Dans le cas où le bénéficiaire dispose de revenus ou recettes propres supérieurs au 35% du montant annuel fixé pour la pension non contributive, le montant de la pension indiquée dans l'alinéa précédent, sera réduit d'un montant égal au montant où les revenus personnels, en computation annuelle, dépassent le pourcentage indiqué.

3ème. Si la somme des revenus ou recettes annuels de l'unité économique plus la pension non contributive, réduite le cas échéant, par les revenus ou les recettes propres du bénéficiaire, dépasse la limite de cumul de ressources applicable, la pension sera réduite pour ne pas dépasser cette limite.

4ème. Malgré la réduction effectuée, conformément aux paragraphes 2ème et 3ème, la pension à reconnaître sera au moins le 25% du montant de la pension établie dans la Loi du Budget de l'État (1.280,65 euros).

<u>- Bénéficiaires insérés dans une même unité économique de vie en commun</u>

1er. Le montant pour deux ou plus bénéficiaires sera calculé conformément à la formule de calcul établie dans la Loi Générale de la Sécurité Sociale. Au montant de la pension non contributive établie, en son montant annuel dans la Loi du Budget de l'État, s'ajoutera le 70% de ce même montant, autant des fois que nombre de bénéficiaires moins un existent dans l'unité économique. Le résultat sera divisé entre le nombre de bénéficiaires avec droit à pension, en obtenant le montant individuel de chacun des bénéficiaires.

Cn= Montant individuel ; C= Montant annuel de la pension ; n= Nombre de bénéficiaires.

Nombre de bénéficiares	**Cn = [C+ (0,7 C(m-1)] / n**	**Montant indiciduel**	
		Annuel	**Mensuel**
2	[5.122,60 + (3.585,82 x 1)] / 2	4.354,21	311,02
3	[5.122,60 + (3.585,82 x 2)] / 3	4.098,08	292,72
4	[5.122,60 + (3.585,82 x 3)] / 4	3.970,02	283,57
5	[5.122,60 + (3.585,82 x 4)] / 5	3.893,18	278,08

2ème. Dans le cas où les bénéficiaires disposent de revenus ou recettes propres supérieurs au 35% du montant annuel fixé pour la pension non contributive, le montant individuel de la pension établie conformément au point précédent, sera réduit d'un montant égal au montant où les revenus personnels, en computation annuelle, dépassent le pourcentage indiqué.

3ème. Si les bénéficiaires vivent en commun avec des personnes bénéficiaires, la somme des revenus ou recettes annuels de l'unité économique plus les pensions non contributives, réduites le cas échéant, par les revenus ou recettes propres du bénéficiaire, ne peuvent pas dépasser la limite de cumul de ressources applicable. En cas d'être dépassée, chacune des pensions sera réduite, pour ne pas dépasser cette limite, en même montant.

4ème. Malgré les réductions effectuées conformément aux paragraphes 2ème et 3ème, la pension individuelle à reconnaître à chacun des bénéficiaires sera au moins le 25% du montant de la pension établie dans la Loi du Budget de l'État (1.280,65 euros).

- Bénéficiaire de pension d'incapacité avec besoin d'autre personne

Le montant obtenu en application des règles visées dans les paragraphes précédents selon la situation de vie en commun sera accrue avec le montant du complément pour besoin d'autre personne (2.561,30 euros) lorsque le bénéficiaire de la pension d'incapacité justifie un degré d'incapacité égal ou supérieur à 75% et le besoin d'autre personne.

- Bénéficiaire de pension d'incapacité commençant une activité du travail

Le pensionné d'incapacité commençant une activité professionnelle pourra concilier la perception de la pension avec les recettes découlant de cette activité pendant un délai maximum de quatre ans, conformément aux règles suivantes :

1er. Si la somme du montant annuel de la pension qui aurait reconnue le pensionné et les revenus annuels qui perçoit ou prévoit qu'il va percevoir de l'activité professionnelle dépassent le montant annuel fixé pour l'indicateur public des revenus d'effets multiples (IPREM), le montant annuel de la pension sera réduit du cinquante pour cent de l'excès. Le montant annuel de l'IPREM pour l'année 2014 s'élève à 6.390,13 euros.

2ème. La somme du montant de la pension résultant de l'application de ce qui est stipulé dans le paragraphe précédent et des revenus annuels découlant de l'activité ne peuvent pas dépasser, en aucun cas, 1,5 fois le montant annuel en vigueur de l'IPREM, qui pour l'année 2014 s'élève à 9.585,20 euros. En cas d'être dépassé, le montant de la pension sera réduit dans le même montant de l'excès.

On ne pourra pas concilier et le droit à la pension d'incapacité sera suspendu lorsque :

a. Les réductions des paragraphes précédents donnent comme résultat un montant de pension égal à zéro ou un chiffre négatif.

b. Le délai maximum de quatre ans s'était écoulé pour concilier la perception de la pension d'incapacité et des revenus découlant de l'activité professionnelle et le pensionné continue à la développant.

c. Les revenus découlant de l'activité professionnelle soient égaux ou supérieurs à 1,5 fois l'IPREM.
Le pensionné récupérera le droit à la pension une fois qui cesse l'activité professionnelle, sans que les revenus découlant de celle-ci soient pris en considération.

Résumé d'application des pensions non contributives de la Sécurité Sociale de l'année 2014

TABLEAU RÉSUMÉ DES MONTANTS POUR L'ANNÉE 2014

PENSIONS CONTRIBUTIVES						
Type de pension (Montants minimales)	**Avec conjoint à charge**		**Avec conjoint à non charge**		**Unité économique unipersonnelle**	
	Mensuel	**Annuel**	**Mensuel**	**Annuel**	**Mensuel**	**Annuel**
Titulaire avec 65 ans	780,90	10.932,60	600,30	8.404,20	632,90	8.860,60
Titulaire ayant moins de 65 ans	731,90	10.246,60	559,40	7.831,60	592,00	8.288,00

PENSIONS CONTRIBUTIVES						
Type de pension (Montants minimales)	**Avec conjoint à charge**		**Avec conjoint à non charge**		**Unité économique unipersonnelle**	
	Mensuel	**Annuel**	**Mensuel**	**Annuel**	**Mensuel**	**Annuel**
Incapacité permanente						
Grande invalidité	1.171,40	16.399,60	900,50	12.607,00	949,40	13.291,60
Absolue	780,90	10.932,60	600,30	8.404,20	632,90	8.860,60
Total: Titulaire 65 ans	780,90	10.932,60	600,30	8.404,20	632,90	8.860,60
Total: Titulaire entre 60 et 64 ans	731,90	10.246,60	559,40	7.831,60	592,00	8.288,00
Total: Découlant de maladie commune ayant moins de 60 ans	393,60	5.510,40	55% base minimale cotisation Régime Général	55% base minimale cotisation Régime Général	393,60	5.510,40
Partielle du régime d'accidents du travail: Titulaire avec 65 ans	780,90	10.932,60	600,30	8.404,20	632,90	8.860,60

PENSIONS CONTRIBUTIVES						
Type de pension (Montants minimales)	**Avec conjoint à charge**		**Avec conjoint à non charge**		**Unité économique unipersonnelle**	
	Mensuel	**Annuel**	**Mensuel**	**Annuel**	**Mensuel**	**Annuel**
Veuvage						
Titulaire avec charges familiales					731,90	10.246,60
Titulaire avec 65 ans ou avec handicap en degré égal ou supérieur au 65%					632,90	8.860,60
Titulaire âgé entre 60 et 64 ans					592,00	8.288,00
Titulaire ayant moins de 60 ans					479,10	6.707,40

PENSIONS CONTRIBUTIVES

Type de pension (Montants minimales)	Avec conjoint à charge		Avec conjoint à non charge		Unité économique unipersonnelle	
	Mensuel	Annuel	Mensuel	Annuel	Mensuel	Annuel
Pension d'orphelin						
Par bénéficiare					193,30	2.706,20
Dans la pension d'orphelin absolue le minimum sera augmenté en 6.707,40 euros par an distribués, le cas échéant, entre les bénéficiaires						
Par bénéficiaire handicapé de moins de 18 ans dans un degré égal ou supérieur au al 65%					380,40	5.325,60

PENSIONS CONTRIBUTIVES						
Type de pension (Montants minimales)	**Avec conjoint à charge**		**Avec conjoint à non charge**		**Unité économique unipersonnelle**	
	Mensuel	**Annuel**	**Mensuel**	**Annuel**	**Mensuel**	**Annuel**
En faveur des proches						
Par bénéficiaire					193,30	2.706,20
Au cas d'inexistence de veuf/veuve, ni d'orphelin pensionné						
Bénéficiaire unique de 65 ans					467,30	6.542,20
Bénéficiaire unique de moins de 65 ans					440,10	6.161,40
Plusieurs bénéficiaires						
Le minimum alloué à chacun des bénéficiaires sera augmenté au montant résultant de partager au prorata 4.001,20 euros par and entre le numéro de bénéficiaires						

PENSIONS CONTRIBUTIVES						
Type de pension (Montants minimales)	**Avec conjoint à charge**		**Avec conjoint à non charge**		**Unité économique unipersonnelle**	
	Mensuel	**Annuel**	**Mensuel**	**Annuel**	**Mensuel**	**Annuel**
Assurance obligatoire de vieillesse et d'invalidité (SOVI) (Montants maxima)						
Vieillesse, invalidité et veuvage					404,80	5.667,20
Prestations SOVI concurrentes					393,20	5.504,80

(*) La limite des revenus pour l'allocation économique pour enfant ou mineur accueilli non handicapé reste fixée en 11.519,16 euros annuels, qui sera augmentée un 15% pour chacun des enfants ou mineur accueilli à partir du deuxième, celui-ci compris.

Si le bénéficiaire fait partie d'une famille nombreuse, la limite des revenus s'élève à 17.337,05 euros annuels, en augmentant en 2.808,12 euros pour enfant à charge à partir du quatrième, celui-ci compris.

PENSIONS NON CONTRIBUTIVES

Type de prestation (Montants maximes)	Type de prestation (Montants maximes)	Type de prestation (Montants maximes)
Allocation économique par enfant ou mineur accueilli à charge		
Mineur de 18 ans non handicapé (*)		291,00
Mineur de 18 ans handicapé en degré égal ou supérieur au 33%		1.000,00
Agé de plus de 18 ans handicapé en degré égal ou supérieur au 65%	365,90	4.390,80
Agé de plus de 18 ans handicapé en degré égal ou supérieur au 75% et besoin d'autre personne	548,90	6.586,80

PENSIONS NON CONTRIBUTIVES		
Type de prestation (Montants maximes)	**Importe mensual**	**Importe anual**
Pension non contributive		
Retraite et invalidité	365,90	5.122,60
Complément de besoin d'autre personne	182,95	2.561,30

Prévention de l'abus aux personnes âgées

Le Comité veut connaître ce qui est en faisant le Gouvernement pour évaluer la dimension du problème, pour faire prendre conscience sur le besoin d'éradiquer l'abus et la négligence contre les personnes âgées, et si quelque mesure législative ou d'autre sorte ont été prises ou sont prévues sur cette matière.

La Stratégie Nationale pour l'éradication de la Violence contre la Femme, 2013-2016, adoptée par Accord du Conseil des Ministres du 26 juillet 2013, comprend des mesures consacrées à la prévention et l'éradication des abus aux femmes et personnes âgées. On peut trouver information dans le site web suivant :
http://www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/pdfs/EstrategiaNacional.pdf

Dans le contexte de cet engagement, on développe des plans de formation de professionnels qui puissent prévenir et donner réponse à ces situations et on met en pratique des protocoles d'action en centres résidentiels.

Services et aides

Le Comité demande l'information disponible sur la moyenne des apports touchés par le service prêté à travers la Loi 39/2006, du 14 décembre, sur la Promotion de l'Autonomie Personnelle et Assistance aux personnes en situation de dépendance, puisqu'on peut avoir un apport par le service en fonction des ressources de l'usager. Le Comité demande aussi s'il y a une procédure de réclamations sur les services.

La Loi 39/2006, du 14 décembre, de Promotion de l'Autonomie Personnelle et assistance aux personnes en situation de dépendance, a créé un nouveau droit pour les personnes qui ne peuvent pas se débrouiller toutes seules pour effectuer les activités basiques de la vie quotidienne.

Pendant 2013 cette réglementation a été modifiée à la suite des mesures d'amélioration introduites en raison des évaluation et accords atteints avec les communautés autonomes, pour s'occuper d'une façon prioritaire des personnes avec un plus grand degré de dépendance et à travers fondamentalement des services établis : promotion et prévention de l'autonomie personnelle, téléassistance, aidé à domicile, centre de jour et de nuit et assistance résidentielle, face à la prestation de soins dans l'environnement familial qui renforce le caractère exceptionnel prévu initialement dans la loi. Toutes les prestations ont la nature de droit subjectif pour les citoyens, c'est-à-dire, ne sont pas des aides dépendant des limites budgétaires, mais le droit à celles-ci est reconnue lorsqu'on remplit les conditions prévues pour celles-ci.

L'État espagnol continue à travailler dans l'élaboration de réglementation, et récemment on a été publié le Décret Royal 1051/2013, du 27 décembre, en vertu duquel on règle les prestations du Système pour l'Autonomie Personnelle et Assistance à la Dépendance, établies dans la Loi 39/2006, du 14 décembre, de Promotion de l'Autonomie Personnelle et Assistance aux personnes en situation de dépendance. Ce Décret Royal établit la réglementation des prestations du Système pour l'Autonomie et l'Assistance à la Dépendance (SAAD), et détermine les intensités de protection des services, compatibilités et incompatibilités entre ceux-ci et assure le caractère exceptionnel de la prestation de soins dans le milieu familial, dans le but d'améliorer la qualité dans l'assistance aux personnes en situation de dépendance. De même, la communauté autonome correspondante ou Administration ayant la compétence, pourra prendre les dispositions réglementaires qui résultent nécessaires pour l'application de ce Décret Royal.

Les personnes en situation de dépendance participent au coût des services en fonction de leur capacité économique et la sorte et le coût du service.

La capacité économique est déterminée en fonction du revenu et le patrimoine du bénéficiaire et sera progressive. Aucune personne ne reste pas exclue de la couverture des prestations par dépendance pour ne pas disposer de ressources économiques.

On établit un minimum de capacité économique, indexé sur un indicateur de revenus (IPREM), en dessous duquel il n'y a pas participation au coût. De même, la participation économique maximale de la personne bénéficiaire ne dépassera pas en aucun cas le 90% du coût de référence du service.

La procédure des réclamations est établie par la Loi 39/2006, du 14 décembre, de Promotion de l'Autonomie Personnelle et Assistance aux personnes en situation de Dépendance, et en tout ce qui n'est pas réglé dans cette loi on applique la règle générale établie dans la Loi 30/1992, du 26 décembre de RJA-PAC. En cas de débouté du droit à une prestation, les citoyens peuvent interjeter appel devant l'administration compétente, ainsi que devant les tribunaux de justice.

Soins de santé

Le Comité rappelle l'importance d'établir des programmes de soins sanitaires et services (en particulier services d'assistance sanitaire primaire) notamment adressés aux personnes âgées, ainsi que directives pour l'assistance sanitaire des personnes âgées. En particulier, on devrait avoir des programmes de santé mentale pour tout problème psychologique concernant les personnes âgées, services de soins palliatifs suffisants et formation spécialisée pour le personnel soignant pour s'occuper des personnes âgées.

Le 11 septembre 2013 le Sénat a adopté avec modifications la motion nº 98 déposée par le Groupe Parlementaire Populaire où le Gouvernement a été prié d'élaborer et créer, en coordination avec les Communautés Autonomes, un espace socio-sanitaire dans le but de fournir une portefeuille de services consacré aux personnes dépendantes et à celles-ci qui pour diverses circonstances ont besoin

d'une assistance sanitaire et sociale simultanée, coordonnée et stable, adaptée au principe de continuité dans l'assistance.

Le Gouvernement et le Ministère de la Santé, Services Sociaux et Égalité est en travaillant déjà en cette direction, premièrement avec l'union dans un seul département ministériel des deux systèmes (sanitaire et social), en continuant avec la proposition d'un Pacte d'État pour la Santé et les Services Sociaux, et plus récemment avec les travaux qui sont à développer pour la création d'un Espace Unique Socio-sanitaire en application de la motion mentionnée adoptée dans le Sénat.

L'État espagnol considère positives toutes les actions tendant à faciliter une assistance continue et intégrale aux personnes en situation de dépendance avec la création d'une portefeuille de services socio-sanitaires et optimiser toutes les ressources disponibles dans le Système pour l'Autonomie et l'Assistance à la Dépendance. En réorientant le traditionnel modèle d'assistance sanitaire axé sur la guérison de processus aigus, et en réorientant vers une nécessaire coordination entre le système sanitaire et le système social pour offrir des services plus efficients et de qualité, en optimisant des ressources.

Logement et soins résidentiels

Le Comité n'a pas trouvé information dans le rapport sur le logement pour les personnes âgées ni sur les soins résidentiels. Le Comité demande que le prochain rapport fournisse une complète information à ce sujet.

Le total des places de logement et services résidentiels pour les personnes âgées s'élève à 383.044 (31/11/2011) avec un taux de couverture de 4,66. Les places destinées à logements aux personnes âgées est de 10.416 et celles de services résidentiels atteignent le chiffre de 372.628 : Information en : http://www.espaciomayores.es/imserso 01/espaciomayores/Estadisticas/ssppmm esp/2011/saresidencial/index.htm

D'autres programmes des administrations publiques sont consacrés à améliorer les conditions de logement des personnes âgées. Le Ministère de la Santé, Services Sociaux et Égalité, à travers les subventions du régime général de l'IRPF, établit une sorte d'appuis économiques pour l'amélioration dans les conditions de logement et leur accessibilité pour les personnes âgées et personnes avec dépendance.

En ce qui concerne les soins résidentiels, on peut trouver l'information dans le site web : http://www.imserso.es/imserso 01/prestaciones y subvenciones/index.htm

Cette information fait référence à que le service d'Assistance Résidentielle offre une assistance intégrale et continue, de caractère personnel, social et sanitaire, qui sera prêté en centres résidentiels, publics ou justifiés, en prenant en considération la nature de la dépendance, degré de celle-ci et intensité des soins qui en ait besoin la personne. Le service d'Assistance Résidentielle peut avoir un caractère permanente, lorsque le centre résidentiel soit la résidence habituelle de la personne, ou temporaire, lorsqu'on s'occupe des séjours temporaires de convalescence ou pendant les congés, les week-ends et maladies ou périodes de repos du personnel soignant non professionnels.

On peut avoir de différentes sortes de centres résidentiels d'assistance aux personnes en situation de dépendance, en raison des différents types de handicap. Le réseau sera composé des centres publics des Communautés Autonomes, des Entités Locales, les centres de référence de l'État pour la promotion de l'autonomie personnelle et pour l'assistance et soins de situations de dépendance, ainsi que les centres privés concertés dûment justifiés, conformément aux conditions qui soient établies pour chacune des Communautés Autonomes et en prenant en considération d'une façon spéciale ceux correspondant au troisième secteur.

Les centres et services privés non concertés qui prêtent des services pour les personnes en situation de dépendance doivent compter sur la justification due de la Communauté Autonome correspondante.

Les pouvoirs publics promouvront la collaboration solidaire des citoyens avec les personnes en situation de dépendance, à travers la participation des organisations des volontaires et des entités du troisième secteur.

En outre, l'État espagnol à travers le Ministère du Développement, dans le programme d'Aides pour la Réhabilitation des logements, subventionne aux personnes âgées plus âgées de 65 ans le 35% d'un prêt qualifié d'un maximum de 3.100 euros. Cette information se trouve dans le site web : http://www.fomento.gob.es/MFOM/LANG CASTELLANO/DIRECCIONES GENERALES/ARQ VIVIENDA/AYUDASVIV/REHABILITACION/

Le Comité demande sur comment ces services son adoptés et inspectés, et s'il y a des procédures de réclamation sur le standard de qualité des soins et services ou sur les traitements en cas de maladie dans cette sorte d'institutions. Le Comité demande aussi si les places disponibles dans les résidences sont en accord avec la demande. Bien plus, le Comité demande laquelle est l'autorité ou entité responsable de l'inspection de foyers et résidences (tant publiques que privées). Le Comité rappelle l'importance d'assurer que tout système d'inspection concernant les standards de qualité des soins et services fournis en résidences et en foyers assistés doit être complètement indépendant de l'entité qui prête le service.

En ce qui concerne l'autorisation et/ou justification et inspection des services prêtés dans les Centres Résidentiels nous devons distinguer deux niveaux de compétence, Administration Générale de l'État et Communautés Autonomes :

- Adoption et inspection des services dans les centres résidentiels et procédures de réclamation dans l'Administration Générale de l'État. À l'échelon de l'État il y a une accréditation du centre dans son ensemble, avec tous les services qui prête, sans faire des justifications spécifiques par service. Il y a un formulaire des plaintes et suggestions dans les Services Centraux et Directions Territoriales de Ceuta et de Melilla de l'IMSERSO et dans les Centres dépendants de ces Directions Territoriales. En outre, ce formulaire est disponible en Internet dans le site web de l'IMSERSO.

- Administration Autonome. Les Communautés Autonomes ont compétence exclusive dans la gestion des centres résidentiels, ce qui fait qu'elles ont le pouvoir d'organiser leurs systèmes d'inspection et procédures de réclamation ; néanmoins, en ce qui concerne l'accréditation de centres résidentiels, elles doivent s'adapter à des critères communs adoptés par le Conseil Territorial des Services Sociaux et Dépendance qui établit l'accréditation de centres dans son ensemble sans exiger qu'il le soit par services.

Accord de places disponibles avec la demande

Dans ce point on répond seulement à la situation concernant les résidences de l'Administration Générale de l'État (Centre Polyvalent de Melilla et résidences concertées en Ceuta et Melilla) ; à ce sujet on peut dire qu'il y a accord entre l'offre de places et la demande, puisque la liste d'attente généralement n'est que de 8 à 9 personnes.

Autorité ou entité responsable de l'inspection

- Administration Générale de l'État. Á l'échelon de l'État l'autorité compétente pour l'inspection des centres publics, ainsi que des centres privés concertés, est le Service d'Inspection de l'IMSERSO et l'Inspection Générale des Services du Ministère de la Santé, Services Sociaux et Égalité.

- Administration Autonome. À titre général chacune des Communautés Autonomes a leur Service d'Inspection avec tant de compétences pour l'inspection des centres propres de la Communauté que des centres privés qui prêtent services sociaux.

Le Comité demande s'il y a législation de protection des données

La réglementation sur la protection des données est établie dans la Loi Organique 15/1999, du 13 décembre, de Protection des Données de Caractère Personnel, qui ont pour but garantir et protéger, en ce qui concerne le traitement des données personnelles, les libertés et les droits fondamentaux des personnes, et notamment de leur honneur et intimité personnelle et familiale.

APPENDIX I - LIST OF PARTICIPANTS

(1) 129th meeting, Strasbourg, 19-23 May 2014
(2) 130th meeting, Strasbourg, 13-17 October 2014

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APPENDIX II
TABLE OF SIGNATURES AND RATIFICATIONS
Situation at 1st December 2014

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	**26/02/03**	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	**03/11/99**	04/04/12
Denmark *	03/05/96	**03/03/65**	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 **X**
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany *	29/06/07	**27/01/65**	
Greece	03/05/96	**06/06/84**	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	**15/01/76**	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein	**09/10/91**		
Lithuania	08/09/97	29/06/01	
Luxembourg *	11/02/98	**10/10/91**	
Malta	27/07/05	27/07/05	
Republic of Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	**25/06/97**	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	**06/05/80**	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	**06/05/76**		
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom *	07/11/97	**11/07/62**	
Number of States 47	**2**+ 45 = 47	**10** + 33 = 43	15

The dates in bold on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

***** States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

APPENDIX III

LIST OF CONCLUSIONS OF NON-CONFORMITY

- Conclusions of non-conformity - Written examination

ESC 3§2 GREECE

ESC 11§1 POLAND

ESC 11§2 GREECE

ESC 11§3 GREECE

ESC 12§1 CZECH REPUBLIC (3rd ground)
ESC 12§1 SPAIN
ESC 12§1 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

ESC 12§3 GREECE
ESC 12§3 POLAND

ESC 12§4 CZECH REPUBLIC (2nd ground)
ESC 12§4 DENMARK (3rd and 4th grounds)
ESC 12§4 GERMANY (1st and 3rd grounds)
ESC 12§4 GREECE (1st ground)
ESC 12§4 ICELAND (1st, 3rd and 4th grounds)
ESC 12§4 LUXEMBOURG (1st ground)
ESC 12§4 POLAND (2nd ground)
ESC 12§4 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (3rd and 4th grounds)

ESC 13§1 CROATIA (1st ground)
ESC 13§1 CZECH REPUBLIC (1st ground)
ESC 13§1 DENMARK (2nd ground)
ESC 13§1 Luxembourg (1st, 2nd and 4th grounds)

ESC 13§3 LATVIA
ESC 13§3 POLAND

ESC 13§4 CROATIA
ESC 13§4 CZECH REPUBLIC
ESC 13§4 GREECE
ESC 13§4 LUXEMBOURG

ESC 14§1 LUXEMBOURG
ESC 14§1 SPAIN

ESC 14§2 LUXEMBOURG
ESC 14§2 SPAIN

ESC 4 ADDITIONAL PROTOCOL 1988 CZECH REPUBLIC
ESC 4 ADDITIONAL PROTOCOL 1988 SPAIN

- Conclusions of non-conformity - Oral examination following the ECSR proposal

ESC 3§1 GERMANY
ESC 3§1 GREECE

ESC 11 LATVIA

ESC 12§1 CZECH REPUBLIC (1st and 2nd grounds)
ESC 12§1 GREECE
ESC 12§1 POLAND
ESC 12§1 UNITED KINGDOM

ESC 12§3 GREECE

ESC 12§4 CZECH REPUBLIC (1st ground)
ESC 12§4 DENMARK (1st and 2nd grounds)
ESC 12§4 GERMANY (2nd ground)
ESC 12§4 GREECE (2nd and 3rd grounds)
ESC 12§4 ICELAND (2nd ground)
ESC 12§4 LUXEMBOURG (2nd ground)
ESC 12§4 POLAND (1st ground)
ESC 12§4 SPAIN
ESC 12§4 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (1st and 2nd grounds)

ESC 13§1 CROATIA (2nd and 3rd grounds)
ESC 13§1 CZECH REPUBLIC (2nd ground)
ESC 13§1 DENMARK (1st and 3rd grounds)
ESC 13§1 GREECE
ESC 13§1 LATVIA
ESC 13§1 LUXEMBOURG (3rd ground)
ESC 13§1 SPAIN
ESC 13§1 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

ESC 14§1 LATVIA
ESC 14§1 POLAND

ESC 4 ADDITIONAL PROTOCOL 1988 GREECE
ESC 4 ADDITIONAL PROTOCOL 1988 DENMARK

APPENDIX IV

LIST OF DEFERRED CONCLUSIONS

CROATIA	ESC 14§1, 14§2
CZECH REPUBLIC	ESC 13§3, 14§1
GERMANY	ESC 12§1, 13§1, 13§3
GREECE	ESC 11§1, 12§2, 14§1
ICELAND	ESC 12§1,
LUXEMBOURG	ESC 3§2, 11§2, 12§1
SPAIN	ESC 11§1
UNITED KINGDOM	ESC 13§4

APPENDIX V - WARNING(S) AND RECOMMENDATION(S)

NONE