

Strasbourg, 30 April 2008

CS-SS(2008)10

**COMMITTEE OF EXPERTS ON SOCIAL SECURITY
(CS-SS)**

3rd meeting

(Strasbourg, 1- 3 April 2008)

**Palais de l'Europe
Room 8**

MEETING REPORT

I. OPENING OF THE MEETING

1. Ms Eva Pedersen, Chair of the Committee of Experts on Social Security, opened the committee's third meeting with a few words of welcome. The list of participants appears in Appendix I.

II. ADOPTION OF THE AGENDA

2. The committee adopted the agenda as it appears in Appendix II.

III. SUPERVISION OF THE APPLICATION OF THE EUROPEAN CODE OF SOCIAL SECURITY (Art. 74)

CS-SS(2008)1

a. Examination of the conclusions of the ILO Committee of Experts on the Application of Conventions and Recommendations and adoption by the CS-SS of these conclusions for submission to the Committee of Ministers

i. General observations

ii. Conclusions concerning individual Contracting Parties

3. The Director of the ILO's International Labour Standards Department, Ms Cleopatra Doumbia-Henry, introduced this item, pointing out that the ILO and the Council of Europe had co-operated successfully for more than 40 years over the supervision of the application of the European Code of Social Security and the Protocol to it. The ILO committee of experts and the CS-SS had played a key role in this exercise. Referring to the technical co-operation and assistance activities of the Council of Europe in connection with the Code and Protocol, in which the ILO was often closely involved, she drew the CS-SS's attention to the opportunities to extend ratification and acceptance of new parts of the Code and Protocol in the light of the obligations that states had already undertaken under of the ILO's international conventions on social security. Country-by-country tables showing the state of ratification of the Council of Europe and ILO instruments had been prepared by the Council of Europe Secretariat.

4. The Ukrainian delegate referred to the excellent co-operation that existed with the Council of Europe and the ILO over the promotion of standard-setting instruments, which had led to the publication of studies comparing Ukrainian legislation with the standards of the Code and the relevant ILO conventions.

5. Mr Egorov from the International Labour Office presented the general observations and conclusions of the ILO Committee of Experts on the Application of Conventions and Recommendations (document CS-SS(2008)1).

6. The ILO committee of experts had examined twenty reports. As in previous years, it had found that progress had been made with the application of the Code, in the form of legislative and practical government measures designed to give full effect to its provisions. Progress had been made on three new fronts: measures to improve the financial sustainability and management of the general social security scheme, adopted in France, had substantially reduced the scheme's deficit in 2006; Ireland had amended the Child Benefit Guidelines to ensure full compliance with Article 43 of the Code; and the Netherlands had changed the system of sanctions applied to unemployment benefit applicants - since 2006, people who had accepted their dismissal of failed to oppose it

were no longer denied unemployment benefit. This would ensure that Article 68 f of the Cod was more effectively implemented.

7. The committee had also drawn attention to cases in which governments had done nothing to implement certain provisions of the Code and Protocol. Technical assistance had been offered to some countries.

8. One of the main problems with social security legislation was its growing complexity. This could make it difficult to obtain effective access to social security benefits and make it harder to manage social security. The ILO committee of experts had added a table to the conclusions, showing the scope for a number of countries to ratify additional parts of the Code.

b. Information submitted by Contracting Parties

9. The committee examined the ILO conclusions country by country, in accordance with Article 74.

10. The delegates from the Contracting Parties to the European Code of Social Security were invited to provide information about their respective national reports, and in particular to report on progress with compliance with the provisions of the Code in the light of comments by the Committee of Ministers in previous resolutions.

11. Germany

The German delegate endorsed the conclusions.

12. Belgium

The Belgian delegate, who had been unable to attend the meeting, had asked the Secretariat to inform the committee that his country approved the conclusions of the ILO committee of experts. The information requested in respect of Part II (Medical care) and Part IV (Unemployment benefit) would be supplied in the next (38th) report.

13. Cyprus

There were no particular comments on the conclusions concerning Cyprus.

14. Denmark

The ILO representative said that the comments concerning Denmark were very technical. The Danish delegate wanted to find a means of resolving these highly specific technical issues. Referring to the suspension of the social pension when the beneficiary had evaded criminal prosecution or the execution of a sentence, she acknowledged that the situation was unfortunate. Act No. 327 of 18 May 2005 affected only a small proportion of social pensions: in fact, very few people were concerned and the provision in question had very little effect in comparison with the overall positive impact of social pensions. She hoped the matter could be resolved, for the repeated comments on the subject gave an inaccurate picture of the universal, non-contributory social pension scheme in Denmark.

The ILO representative said that the task of the ILO committee of experts was to examine not just major issues such as the governance, funding and sustainability of social security, but also specific matters that could affect individual beneficiaries. It was important, however, that information about the practical impact of the Act should be

included in the next report.

15. Spain

The Spanish delegate was satisfied with the committee of experts' conclusions concerning his country, since, for the first time, there were no comments. Very specific technical issues had been raised repeatedly in the past. A solution had been found through bilateral contacts with the Council of Europe and the ILO, for it was sometimes difficult to provide comprehensive explanations in an annual report.

16. Estonia

The ILO representative said that as Estonia's report was only its second one, it had been analysed in great detail. This accounted for the number of comments, which concerned particular situations, for instance loss of unemployment benefit because of a breach of employment duties, wilful misconduct, etc.

The Estonian delegate explained that the rules concerning survivors' benefit were accounted for by the social context in Estonia, where the female unemployment rate was one of the highest in Europe. People who could no longer find employment because of their age or because they were incapacitated received an old-age or invalidity pension.

17. France

The French delegate was delighted that France fully implemented the European Code of Social Security and that the report of the Court of Auditors had been of use to the committee of experts in its work. It was difficult to reconcile social security with employment policy because of such conflicting factors as the need for sustainable funding and schemes to make it easier for companies, particularly labour-intensive ones, to take on staff.

As for the replacement rate for old-age benefit in cases where the beneficiary had worked for a very short period, she considered that her country complied with the provisions of the Code. Although the beneficiary received a small contributory pension, it was supplemented with a non-contributory social pension.

18. Greece

The ILO representative said that since 1990 the committee had been focusing on the need to re-establish, in Greek legislation, the right of victims of employment injuries entailing invalidity of less than 50% to long-term benefit at a reduced rate. The committee had suggested a novel solution to the Greek government in its latest conclusions, the namely a sociological study and statistical survey of the living and working conditions of victims of employment injuries entailing invalidity of less than 50%, since cases of employment injuries entailing invalidity of 33.3 to 49.9 % were neither recorded nor monitored by the invalidity boards.

The Greek delegate confirmed that the IKA-ETAM actuarial services had been asked to compile the information needed for a meeting between national experts and Council of Europe and ILO experts in 2008.

19. Ireland

The ILO representative drew attention to the progress made by Ireland, which had taken account of all the preliminary comments. Under Irish law, people could be disqualified

from unemployment benefit if they had lost their job as a result of misconduct, whereas under Article 68 f of the Code, misconduct should not entail the suspension of benefit unless it was wilful. The committee had suggested including a reference to the general principle in the Article 68 f in the guidelines for the deciding officers.

The Irish delegate said the situation with regard to unemployment benefit was being examined, adding that he wanted to ask a question concerning the interpretation of Article 29.5 of the Code under Item XIV (other business).

20. Italy

The ILO representative said the committee of experts had made a proposal similar to that put to Greece, to the effect that Italy supply statistical or sociological studies showing how the Italian family benefit system defrayed the cost of maintenance of children for the various categories of persons protected. The committee had also asked for information about measures to combat evasion and fraud.

The Italian delegate agreed with the conclusions and said that additional information about occupational accidents and diseases had been submitted before the CS-SS committee meeting. Italy's family benefit statistics did not make it possible to distinguish between benefits allocated to children and those awarded to disabled adults. He informed the committee about measures taken to help people to adapt to technological change, such as the virtual assistant available via the Internet or television or by telephone and a centre set up for hearing-impaired people.

21. Luxembourg

The Luxembourg delegate referred to the request for information about the application of Article 18 of the Code further to the new Luxembourg law providing for an integrated approach to incapacity for work, which no longer included the notion of "sickness of the same nature". The law would be amended to provide a solution to the most difficult cases. The relevant information would be supplied in the next report.

22. Norway

The ILO representative, while acknowledging the steps Norway had taken to give full effect to the provisions of the Code in respect of unemployment benefit, called for further efforts and asked that the Directorate of Labour guidelines specify Norway's obligations under the international social security instruments it had ratified.

The Norwegian delegate provided information about the unemployment benefit system, which was based on the concept of genuine job-seeker, and explained why there was no initial protection period. She also referred to the guidelines used by the Directorate of Labour and Social Affairs.

23. Netherlands

The ILO representative raised the issue of the definition of the expression "culpably unemployed". A worker was considered to be culpably unemployed if he or she became unemployed as a result, inter alia, of negligence or recklessness. Since these did not necessarily constitute "wilful misconduct" and hence warrant the worker's being penalised in accordance with Article 68 f of the Code, the committee wanted to know how the provisions in question were applied in practice.

The Netherlands delegate explained that, according to domestic case law, the worker

must have wilfully acted against the employer.

With regard to medical care, many questions had been answered at the bilateral meeting in December 2007 between the Netherlands experts and those from the Council of Europe and the ILO. There were questions still outstanding in connection with invalidity benefit.

24. Portugal

The ILO representative noted the extensive reforms Portugal had embarked on in the various branches of social security and the novel nature of some of the measures, and considered it important to monitor developments in the application of both the European Code of Social Security and the relevant ILO conventions.

The Portuguese delegate said that the additional information requested in respect of health care and old-age and unemployment benefit would be provided in the next report,

25. United Kingdom

The ILO representative observed that pension reform in the United Kingdom was based on a long-term perspective, including forecasts up to the year 2046, by which time the retirement age would have been raised to 68 for both men and women. The benefit system was very complicated in the United Kingdom. He asked how child tax credit was calculated and what steps could be taken to ensure that the committee could take account of it when calculating benefits.

The United Kingdom said that the country had introduced a new, more generous Pensions Act reforming old-age pensions. 10 years' contributions were currently needed for entitlement to the basic pension and 40 years' contributions for a full pension. As from 2010, one year's contribution would be sufficient for a basic pension, and 30 years' contributions would give entitlement to a full pension. The retirement age was being increased progressively from 65 to 68. He agreed that the benefit system was complicated in the United Kingdom and acknowledged that it was increasingly difficult to envisage a single benefit because of the growing number of benefits. Information about child tax credit would be provided in the next report. In answer to a question from the ILO representative, he said that unemployment benefit was increased annually in line with inflation.

26. Slovenia

The Slovenian delegate thanked the committee of experts, noting that her country complied with the provisions of the Code.

27. Sweden

The Swedish representative accepted the conclusions and said she would provide some of the information required when Item IX (Current or planned reforms) was discussed.

28. Switzerland

The Swiss delegate observed that her country complied with the provisions of the Code.

29. Czech Republic

The Czech delegate was satisfied with the conclusions concerning his country. The next report would answer the question concerning family benefit for foreigners temporarily

resident in the country.

30. Turkey

The ILO representative observed that reform of the social security system in Turkey was speeding up, with the introduction of new forms of organisation and management based on modern information and communication technology. Care should be taken to ensure that the pace and scale of change did not outstrip the capacity of the insured population to adapt to it. He referred to a number of technical questions put by the committee in connection with medical care and sickness and maternity benefit.

The Turkish delegate said that the Constitutional Court had repealed certain provisions of the Health Insurance Act and that the information requested would be provided in the next report.

31. In accordance with its terms of reference, the committee adopted its conclusions concerning the application of the Code and Protocol and instructed the Secretariat to submit to the Committee of Ministers the draft Resolutions on the application of the European Code of Social Security and its Protocol, as set out in Appendix III.

32. These draft resolutions would be placed on the agenda of the meeting on 14 May 2008, then forwarded to the Committee of Ministers for adoption at its meeting on 21 May 2008. The draft resolutions would be forwarded, for information, to the European Committee for Social Cohesion (CDCS) so that it could take account of them at its next meeting, in May.

IV. ARTICLE 9 (THE RIGHT TO SOCIAL SECURITY) OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

33. Ms Maria Virginia Bras Gomes from the Portuguese Ministry of Labour and Social Solidarity, who was a member of the United Nations Committee on Economic, Social and Cultural Rights, presented General Comment No.19, which determined the scope of the right to social security under Article 9 of the ICESCR. The comment had been adopted by the UN committee in November 2007 in order to clarify the content of the right to social security as provided for in Article 9, including the right to social assistance.

34. Ms Bras Gomes began by saying that General Comments were not binding in themselves but had become a crucial means of ensuring a more progressive and modern interpretation of the Covenant. They were widely monitored by national and international NGOs, and only recently the World Bank had referred to General Comment No. 15 on the right to water.

35. There were two very important aspects to General Comment No. 19, which were apparent from the introduction: 1) the redistributive character of social security and its role in promoting social inclusion and 2) the inclusion of non-contributory social insurance schemes, whether universal or targeted schemes. The comment highlighted the fact that social security should be considered as a "social good". Accordingly, the right to social security presupposed 1) the existence of a social security system comprising one or more schemes and 2) that public authorities should take responsibility for the effective administration or supervision of the system, which should encompass the nine principal branches of social security defined in ILO Convention No. 102.

36. Non-discrimination, a principle underpinning the entire Covenant, was also mentioned in paragraph 29 of the comment, which provided a very detailed list of grounds of discrimination.

37. Ms Bras Gomes hoped that the General Comment would provide food for thought and would help, at its own level, to foster the full exercise of the right to social security in the years to come.

38. The committee members asked about the Covenant's supervision machinery and the principle of non-discrimination and its application to illegal migrants.

39. Ms Bras Gomes said that the supervision machinery, which was based on five-yearly reports, was fairly weak and had no specific power to oblige member states to take action. As for non-discrimination, the Covenant was based on human rights approach and therefore covered everyone residing in the country, including people who were there illegally.

40. Another question concerned the ban on retrogressive measures. Given that social security systems were facing problems, restrictions might be needed to ensure their sustainability. In such circumstances, would such measures be contrary to the Covenant? Ms Bras Gomes replied that such measures would be accepted only if it could be proved that there was no alternative.

41. Ms Bras Gomes' report and General Comment No. 19 had been made available to the participants.

V. RECENT DEVELOPMENTS AT THE ILO CONCERNING INTERNATIONAL STANDARDS FOR SOCIAL SECURITY

42. Ms Ursula Kulke, Co-ordinator of International Social Security Standards in the Social Security Department of the ILO, described the Organisation's recent work on social security standards in a globalised society.

43. This work had been prompted by a request to the ILO from some governments in March 2007 for an outline of the situation with regard to ratification of the ILO conventions and possible means of improving the situation. In this connection, the ILO had held a workshop in Turin in September 2007 on strengthening ILO social security standards, followed in November/December 2007 by informal consultations with the constituents, the results of which were set out in a technical document, which had been made available to members of the CS-SS.

44. Ms Kulke said that social security was considered as a human right in the main United Nations instruments and that its extension was one of the main objectives of the ILO and part of its remit. The social security conventions and recommendations, in particular Convention No. 102, were the main instruments the ILO used in its efforts to extend social security cover to all. The low level of cover in the world generally and the emergence of new concepts in the field of social security were, however, raising the question as to whether it was possible to extend social security to all those who needed it by means of the existing instruments.

45. Seven theoretical options had been put forward in the technical document, namely:

- increased efforts to promote the existing conventions to ensure that they were more widely applied and ratified;
- preparation of a new social security convention providing for a universal right to a series of basic benefits;

- preparation of a new instrument linked to Convention No. 102, providing for a universal right to a series of basic benefits;
- modernisation of Convention No. 102;
- consolidation of the existing up-to-date social security instruments in a new overarching convention;
- preparation of an overarching recommendation setting out basic social security principles;
- preparation of a non-binding framework.

46. The technical document would be submitted to the ILO Governing Body in November 2008 and it would be up to the constituents to decide what action to take on it.

47. This presentation was followed by questions and comments from members of the CS-SS. The Austrian delegate asked to what extent the conventions on labour law had been ratified. Ms Kulke replied that these conventions, which were considered as the hard core of the Organisation's work, had been ratified by virtually all the ILO member states but that there were just as many ratifications of the conventions concerning social security.

48. The Luxembourg representative made three comments. Firstly, the ILO should perhaps focus not just on technical matters but on more philosophical considerations, such as the beneficial effect of social security on social cohesion, the standard of living and growth. Secondly, one way of making progress would be to prepare a consolidated convention, as had been done in the maritime sector, in which case states would face major challenges. Thirdly, since he could find no reference to the ILO Resolution concerning social security adopted in 2001, which set out the main principles of social security, he wondered whether it was still used as part of the ILO's strategy. Ms Kulke replied that the resolution was still used, for example in the campaign to extend social security coverage to all. As for the reference to the consolidated Maritime Labour Convention, it was up to the constituents to decide, but the situation was different in the case of social security, where the first three floors existed but the foundations were lacking.

49. The United Kingdom delegate thought there was often insufficient awareness of the ILO social security conventions. He awaited the Governing Body's meeting with interest. Ms Kulke agreed that not enough was known about the conventions, partly because of the insufficient resources allocated to standard-setting instruments.

50. The German delegate drew attention to the major Council of Europe programme for promoting standard-setting social security instruments, which also helped to promote the ILO conventions. The terms "social security" and "social protection" were sometimes confused. Convention No. 102 on social security was supposed to establish a minimum level of protection by linking benefits to wages in each country. Ms Kulke said that Convention No. 102 also covered social assistance. A "basic social floor" was a new concept, and it was necessary to see how it would develop.

VI. CONTRIBUTION OF THE CS-SS TO THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COUNCIL OF EUROPE'S HIGH-LEVEL TASK FORCE ON SOCIAL COHESION

51. At their 1014th meeting, on 12 December 2007, the Ministers' Deputies had welcomed the report of the High-Level Task Force on Social Cohesion in the 21st Century, "Towards an active, fair and socially cohesive Europe". The report sought to

establish guidelines for the reforms to be carried out at national and international level and priorities for action, which mainly concerned the Council of Europe.

52. Ms Lis Witsø-Lund, Chair of the European Committee for Social Cohesion (CDCS), described the Task Force's main recommendations and the discussions in the CDCS Bureau on the action to be taken on the report. At the Bureau meeting, the Secretariat had singled out three prospective activities based on the Task Force's recommendations, for submission for consideration by the CDCS :

- social mobility as a major condition for social cohesion;
- the right to employment and to geographical mobility and access to equal conditions in a globalised world;
- promoting the social rights of the homeless.

53. The Bureau had selected two other themes:

- the role of public administrations in building social cohesion;
- citizens' responsibility.

These should be translated into concrete proposals for work and submitted to the CDCS for consideration.

The Task Force had also recommended holding a ministerial conference on social cohesion.

54. The committee was invited to examine the report, in particular the recommendations, and to make proposals for the CS-SS's contribution to its implementation (documents TFSC(2007)31 and TFSC(2007)31) .

55. During the ensuing discussion, after statements by the Spanish delegate, the ETUC representative, the Croatian, Italian, Irish and French delegates and the ILO representative, the committee expressed the view that social security was a fundamental pillar of social cohesion, which should occupy an important place in the action taken on the recommendations.

56. Some delegations thought the Task Force's report did not make many references to social security (concept of suitable employment, new risks, activation, co-ordination of administrative procedures, new investment in social rights), but they all agreed that there were important subjects that could be dealt with by the CS-SS and would help to implement the recommendations. The Spanish delegate suggested addressing the issue of new risks. The Luxembourg delegate agreed that new risks were important, but said that so was protection against traditional risks, which had a stabilising role. The French delegate suggested that work should also be done on the adaptation of social security legislation to change and the impact on the application of European standard-setting instruments. Some delegations observed that the committee's current activities also contributed to implementing the Task Force's recommendations: the work on what constituted suitable employment was mentioned.

57. The committee suggested that new social risks be included as a theme for future action by the European Committee for Social Cohesion (CDCS). The committee also wished to be involved in preparations for the conference of ministers responsible for social cohesion proposed by the Task Force if the Committee of Ministers decided to hold such a conference. These points would be put to the CDCS at its next meeting, on 29 and 30 May.

VII. ACTIVITIES FOR THE PROMOTION OF COUNCIL OF EUROPE INSTRUMENTS IN THE SOCIAL SECURITY FIELD

a. State of signature and ratification of the Council of Europe's legal instruments in the field of social security

58. The committee took stock of the situation with regard to ratification of standard-setting social security instruments. Latvia might ratify the European Code of Social Security in autumn 2008, as might Lithuania. Romania was prepared to ratify Parts II, III, V, VII and VIII of the Code by the end of the year. The Netherlands was considering ratifying the Revised Code and denouncing Part VI of the Code (Employment Injury Benefit). The Moldovan delegate said that ratification of the Code was no longer on the agenda because the Ministry of Health and Ministry of Finance were against it.

b. Bilateral and regional co-operation activities

59. The committee took note of the Council of Europe's co-operation activities in the social security field, in particular the newly-published comparative studies on the compatibility of Ukrainian legislation with the Code, and co-operation with the Russian Federation.

c. European Code of Social Security (Revised)

60. The Netherlands delegate said that on 17 March 2008 the lower House of Parliament had approved ratification of the Revised Code and the denunciation of Part VI of the Code (Employment Injury Benefit), because of the judgment by the central Netherlands Appeal Court prohibiting any contribution by insured persons to medical expenses in the event of an occupational accident or disease by virtue of the direct application of Articles 31, 32 and 34 of the European Code of Social Security. If the upper House of Parliament upheld this decision, his country would ratify the Revised Code, in which case ratification by a second country would be needed for the Revised Code to come into force.

d. 18th and 19th training courses on social security

61. The Secretariat reported on the 18th training course on social security, which had concerned standard-setting social security instruments and had taken place in Vilnius from 13 to 15 September 2007 at the invitation of the Lithuanian authorities. The 2008 training course would also concern standard-setting instruments, which would be dealt with in greater detail. It would be held in Madrid from 5 to 7 November.

62. The Spanish delegate provided information about the training course and invited countries to attend.

VIII. NEW CHALLENGES FOR SOCIAL SECURITY AND WAYS TO RESPOND TO THEM

63. Mr Mark Pearson, Head of the Social Policy Division of the Organisation for Economic Co-operation and Development (OECD), gave a presentation on the challenges for social security and means of addressing them.

64. He analysed the social security challenges arising from technological, social, demographic and economic change. One of the first questions was whether globalisation

led to a reduction in social protection. Open economies were likely to be harder hit by globalisation, but the demand for social protection was going to increase. The population, which already enjoyed social protection, was going to fight to keep it. There was therefore reason to believe that globalisation would entail a demand for better social protection, and not a levelling-down effect. Economists were largely agreed that social security contributions and taxes did not determine the cost of labour. It was evident in practice that social security expenditure was higher than ever, that the EU countries did not want to dismantle social protection, that the small, open economies had a high level of social protection and low levels of poverty, that taxes on capital were higher and that there was not sufficient migration to pose problems for the welfare state.

65. Inequalities in income distribution in the population were not, in his view, a major problem. Variations were not very large in the G7 and were offset by the increase in social expenditure by virtue of taxation.

66. While globalisation was not a serious danger and social protection was not expected to collapse, there was a limit to the extent to which taxes could be raised. Social policies needed to be reoriented to deal with technological change and the ageing of the population.

67. It was therefore necessary to address the real causes of discrepancies, change social behaviour and invest in active social policies geared to children and young people. Existing family policies were inappropriate, and yet it had been shown that poverty in childhood and youth had highly detrimental effects on future income in adulthood.

68. Social policy should also focus on employment. All this was dependent on expenditure on old-age and invalidity policies being controlled.

69. To conclude, globalisation was not a destructive factor, but the only way to make progress was to change people's behaviour and invest in children and employment.

70. The delegates asked about immigration, the role of international family policy instruments, the invalidity policies of the various countries (quota systems, sheltered workshops) and the need for people to have not just a job but a decent job.

71. As far as immigration was concerned, Mr Pearson acknowledged the important role of migrants in restoring countries' demographic balance and putting their economies back on an even keel. Referring to international family policy instruments, he said that instruments dealing solely with family benefits would not be sufficient. As for policies for integrating people with disabilities, sheltered workshops were very expensive and not very effective in integrating people in ordinary jobs. He agreed with the ETUC representative that statistics showed that half of all poor people had jobs. He stressed that there was six times less risk of suffering poverty if the person in question had a job, but this was not enough in itself: it was necessary to find career paths that could get people off welfare and to aim for full employment.

72. Lastly, in response to a question as to where the statistics mentioned in his presentation could be obtained, Mr Pearson referred to a report entitled "How active social policy can benefit us all", published by OECD in 2005.

IX. MAIN CURRENT OR PLANNED REFORMS IN SOCIAL SECURITY

73. In accordance with paragraph 4 viii of the CS-SS's terms of reference, which instructed the committee to study the evolution of national social security legislation and

observe pan-European trends, Azerbaijan, the Czech Republic, Croatia, Spain, Italy, Switzerland and Sweden reported on their main current and planned reforms in this field.

74. The Azerbaijani delegate presented the reforms concerning social protection and sustainable development in his country.

75. The Swiss delegate described the reform of the basic invalidity insurance scheme that has come into force in Switzerland on 1 January 2008. An early detection system had been introduced to ascertain as soon as possible whether measures were needed to enable people to stay in their jobs or whether action by the invalidity insurance scheme was warranted.

76. The Swedish delegate informed the committee about ongoing reforms in her country in the area of health insurance and family benefit. Several health insurance measures were planned to get people back to work and prevent their being off work for long periods. The reform of family benefit was designed to enable people to strike a work/life balance.

77. The Spanish delegate mentioned the Social Security Measures Act (No. 40/2007), which reflected an agreement on the part of the government, employers and trade unions and concerned various branches such as old-age, invalidity and survivors. The Act was designed to strengthen solidarity and, at the same time, ensure greater proportionality between contributions and benefits.

78. The Italian delegate referred to the adoption of a Well-Being Protocol in 2007. The retirement age was gradually being increased and would reach 61 in 2013. There was a Bill on safety in the workplace amending the system for dealing with employers who did not comply with safety standards.

79. The Croatian delegate informed the committee of the pensions reform in 2007, which had increased pensions by 4% to 25.9%, depending on the case. Another measure in force since 1 January 2008 concerned early retirement pensions.

80. The Czech Republic had supplied a written report on the main developments in the country, which had been made available to the participants. Written reports by Azerbaijan in Switzerland had also been distributed.

X. THE CONCEPT OF SUITABLE EMPLOYMENT IN RELATION TO UNEMPLOYMENT BENEFITS

81. Further to the decision taken at the CS-SS's second meeting, a group of experts had met in Paris on 25 and 26 June 2007 to analyse countries' replies to the questionnaire on suitable employment. A number of points had been singled out at the meeting. Countries had subsequently been asked to provide additional data and answer further questions.

82. On this basis, a final document had been prepared for discussion by the CS-SS.

83. Ms Michèle Baukens, General Adviser to the Belgian National Employment Office (ONEM), presented document CS-SS(2008)6, which analysed 15 different criteria which countries used to define or apply the concept of suitable employment. The document also analysed the penalties applicable if suitable employment was turned down without a legitimate reason. A distinction was made between the first offence and subsequent

offences. The criteria used to assess the efforts made to find job and decide on plans of action had also been analysed.

84. Mr Philippe Melville, Irish delegate to the CS-SS, put forward a number of conclusions and references for discussion. Firstly, the focus on encouraging people actively to look for work had changed the context in which "suitable employment" was considered. He thought that references would be useful in determining whether different terms (such as "appropriate", "reasonable" or "compatible") introduced different standards. Given the way in which various factors (e.g. duration of unemployment, family circumstances, travelling time and the labour market situation) interacted, however, the references could not serve as a calculation rule, nor as a checklist. It was impossible to avoid making a subjective judgment in each case, and the references should be flexible enough to allow that.

85. The committee was invited to decide what action should be taken on document CS-SS (2008)6 and whether to prepare a recommendation to the Committee of Ministers on the subject, including the references mentioned by Mr Melville.

86. Several delegations spoke on the subject, agreeing that the analysis was of high quality and that it was important to continue working in this field and to try to make the most of the document. They considered, however, that a recommendation would not be the best means of pursuing the work, on the grounds that it was difficult to find a common dominator and that there were more differences than similarities in the application of the concept of suitable employment. Furthermore, the labour market situation changed rapidly, and it was necessary to retain a flexible approach.

87. The delegates suggested the following options instead of a recommendation: preparing a practical guide to the application of the Code; general comments on the application of the relevant articles of the Code; or taking a joint CS-SS stand, as the committee had done in the past in the area of family benefits.

88. To this end, the committee wanted the working group to continue to work on the subject and prepare, for the next meeting, a guide to the way in which the concept of suitable employment was understood and applied in the various member states. The Finnish delegate suggested that the study should also analyse the socio-economic context in which suitable employment was assessed.

XI. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS

89. At the CS-SS's second meeting, Mr Claude Ewen (Luxembourg) had presented a proposal for the preparation of a new co-ordination instrument in the form of a framework agreement (see document CS-SSassCoord(2007)note). A group of experts had met in Paris on 27 and 28 September 2007 to hold a preliminary discussion on this proposal.

90. The group of experts had prepared document CS-SS(2007)2 for the CS-SS. Members were asked to consult their national authorities to find out whether their country might be interested in ratifying a framework agreement of this kind.

91. Mr Ewen presented the three options envisaged for the framework agreement. The most extreme would be acceptance of Regulation 1408/71 as it stood and as it evolved for the countries that ratified it. Another was partial, *à la carte*, ratification in respect of each branch of social security, whereby all the co-ordination principles would apply to the branch accepted. The third option was even more flexible - partial ratification for each branch, but with countries being allowed to exclude certain co-ordination principles. There were three

questions to be considered: was there interest in a Council of Europe framework agreement concerning co-ordination, modelled on Regulation 1408/71? If so, what position would countries adopt with regard to ratification of such an instrument and, thirdly, what questions, if any, had the working group on co-ordination failed to raise?

92. It emerged from the discussions that most countries were not currently inclined to prepare another multilateral co-ordination instrument, as they favoured bilateral social security agreements with other countries.

93. When the participants were sounded out in turn, only the Spanish, Portuguese and Danish delegates were in favour of such an instrument. The French, Swiss, Netherlands and Italian delegates considered the idea interesting but said they had doubts as to its feasibility (how the agreement could be managed at national and international level, and the existence of a multitude of bilateral relations) and thought it would pose basic legal problems. The German delegate said that if one looked at what happened in practice, it was apparent that few countries applied European Union standards, as set out in Regulation 1408/71, in their bilateral agreements.

Austria, the United Kingdom and Norway favoured direct bilateral relations.

94. Among the countries to which Regulation 1408/71 did not apply, only Croatia was in favour of a framework agreement. Albania, Azerbaijan, Bosnia and Herzegovina, Georgia and Moldova favoured bilateral agreements and had other priorities.

XII. INFORMATION FROM THE SECRETARIAT

a. Decisions of the Committee of Ministers and of the CDCS of interest to the CS-SS

b. Other information of interest to the CS-SS

95. Ms Annachiara Cerri announced that the Secretary General had decided to set up an internal co-ordinating group representing all the administrative entities and competent bodies. The group was intended as a working body designed to facilitate the adoption of an effective internal cross-disciplinary approach, in accordance with the Task Force's recommendations. Its purpose was to ensure that the social dimension was taken into account in all the fields in which the Council of Europe intervened, establish a common internal vision and, as requested, draw up a consolidated document. It would have no decision-making power and would on no account replace a steering committee, in particular the CDCS, which took the lead and whose agenda included discussion of follow-up to the Task Force's report. She also provided information about the offer from the Russian Minister for Health and Social Development to host the first conference of European ministers responsible for social cohesion in Moscow in the first three months of 2009.

XIII. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY

96. The representatives of the European and international bodies and other observers at the meeting were invited to inform the committee about activities that might be of interest to it.

97. The representative of the European Commission provided information about amendments and proposals for amendments to Regulations 1408/71 and 574/72.

She informed the committee of two new proposals for directives on the field of migration.

She also referred to the European Health Insurance Card introduced in 2004, which replaced the E112 form and now existed in all the European Union countries, as well as in Switzerland and the European Economic Area countries.

XIV. OTHER BUSINESS

98. The Irish delegate, referring to the interpretation of Article 29.5 of the Code, said the Irish Human Rights Commission considered that the situation in Ireland was not in keeping with the Code.

Article 29.5 covered cases in which a beneficiary, because of advanced age at the moment the pension scheme entered into force, was unable to fulfil the qualifying conditions (15 years of contribution or employment) for a reduced pension under Article 29.2 of the Code. Article 29.5 foresaw the option of paying "reduced benefit", "under prescribed conditions". The Irish government considered that the phrase "under prescribed conditions" afforded a degree of flexibility to countries and made it possible to retain the minimum contribution requirement most appropriate to the situation in the country. The government considered that Article 29.5 did not require that payments be made in all circumstances, no matter how few contributions had been paid.

The ILO committee of experts considered that Article 29.5 applied only to pension schemes "conditional upon a minimum period of contribution or employment", which did not require pensions to be paid in all cases, regardless of how few contributions had been paid by the person concerned. Ireland therefore fulfilled the obligations laid down in the Code.

The members of the CS-SS endorsed the ILO committee's interpretation, taking the view that Ireland fulfilled the provisions of the Code in this respect. The committee thus ratified the committee of experts' decision.

99. Delegates were invited to submit to the Secretariat topics that could be addressed at future meetings of the CS-SS.

100. The committee renewed the terms of office of Ms Eva Pedersen (Denmark) as Chair and Mr Joseph Camilleri (Malta) as Vice-Chair for one year.

XV. DATE OF THE NEXT MEETING OF THE CS-SS

101. The next meeting of the CS-SS would take place in Strasbourg from Tuesday 24 to Thursday 26 March 2009.

APPENDIX I

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APPENDIX II

AGENDA

I. OPENING OF THE MEETING

II. ADOPTION OF THE AGENDA

III. SUPERVISION OF THE APPLICATION OF THE EUROPEAN CODE OF SOCIAL SECURITY (Art. 74)

- a. Examination of the conclusions of the Committee of Experts on the application of ILO Conventions and Recommendations, and adoption by the CS-SS of these conclusions for submission to the Committee of Ministers

- i. General observations
 - ii. Conclusions concerning individual Contracting Parties

- b. Information submitted by Contracting Parties

IV. ARTICLE 9 (THE RIGHT TO SOCIAL SECURITY) OF THE INTERNATIONAL CONVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICERESCR)

Presentation of the General Comment on Article 9 of the ICESCR which was adopted in December 2007 by the Committee on Economic, Social and Cultural Rights of the United Nations.

V. LAST DEVELOPMENTS AT THE ILO CONCERNING INTERNATIONAL STANDARDS ON SOCIAL SECURITY

Presentation of the last reflexions at the ILO in relation to the current norms and room for new norms.

VI. CONTRIBUTION OF THE CS-SS TO THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COUNCIL OF EUROPE'S HIGH LEVEL TASK FORCE ON SOCIAL COHESION

Presentation of the follow-up to the report of high-level task force on social cohesion in the 21st century – “Towards an active, fair and socially cohesive Europe” (adopted by the Minister's Deputies at its 1014th meeting on 12 December 2007) and debate on the programme of action for social cohesion.

VII. ACTIVITIES FOR THE PROMOTION OF THE COUNCIL OF EUROPE INSTRUMENTS IN THE SOCIAL SECURITY FIELD

- a. State of signature and ratification of the Council of Europe's legal instruments in the field of Social Security
- b. Bilateral and regional cooperation activities
- c. The European Code of Social Security (Revised)
- d. 18th and 19th training courses on social security

VIII. CHALLENGES TO SOCIAL SECURITY AND WAYS TO RESPOND TO THEM

Presentation on the broader challenges to social security arising from demographic and economic changes, and the best ways of responding to them.

IX. MAIN CURRENT OR PLANNED REFORMS IN SOCIAL SECURITY

Information on important current or planned reforms in selected countries.

X. THE CONCEPT OF SUITABLE EMPLOYMENT IN RELATION TO UNEMPLOYMENT BENEFITS

Presentation of the results of the meeting on the concept of suitable employment in relation to unemployment benefits (Paris, 25-26 June 2007) and the new information gathered.

XI. COORDINATION OF SOCIAL SECURITY

Tour de table on the document prepared by the Group of experts that discussed the proposal to elaborate a new co-ordination instrument made at the last meeting of the CS-SS

XII. INFORMATION FROM THE SECRETARIAT

- a. Decisions of the Committee of Ministers and of the CDCS of interest to the CS-SS Committee
- b. Other information of interest to the CS-SS Committee

XIII. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY

XIV. OTHER BUSINESS

XV. DATE OF THE NEXT MEETING OF THE CS-SS

APPENDIX III

DRAFT RESOLUTIONS ON THE APPLICATION OF THE EUROPEAN CODE OF SOCIAL SECURITY AND ITS PROTOCOL

**Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Belgium
(Period from 1 July 2006 to 30 June 2007)**

*(Adopted by the Committee of Ministers on 2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 14 August 1970 have been binding on Belgium, which ratified them on 13 August 1969;

Whereas, when ratifying the Code and the Protocol, the Government of Belgium stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of Belgium submitted its 37th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part II (Medical care), Article 10.2.a.i of the Code, as amended by the Protocol and with reference to its previous resolutions that the level of individual cost-sharing by insured persons with ordinary status (non-preferential status) for visits and consultations with general medical practitioners and specialists exceeds the 25% threshold established by the Protocol for this type of care;

II. concerning Part IV (Unemployment benefit), the detailed information on Part IV received with Appendix I to the 36th report of Belgium in January 2007;

Finds that law and practice in Belgium continue to give full effect to the parts of the Code which have been accepted, as amended by the Protocol, subject to further information on the points raised below concerning Parts II and IV;

Decides to invite the Government of Belgium:

I. concerning Part II (Medical care), Article 10.2.a.i of the Code, as amended by the Protocol, to continue to include systematically in its annual reports information on all new measures taken to give full effect to this provision of the Protocol;

II. concerning Part IV (Unemployment benefit), to provide in its next report detailed replies to the following questions:

a. Article 23. Under the general scheme, in order to be eligible for unemployment allowances, a full-time worker must complete a certain qualifying period, the length of which depends on the worker's age. If he is between 36 and 50 years of age, he must provide evidence of 468 days worked during the 27 months preceding the application for benefit; if he is aged 50 or over, the qualifying period increases to 624 days worked during the previous 36 months. The Committee of Ministers observes that the length of the qualifying period for these categories of workers is much longer than in the other Contracting Parties. It also observes that the said qualifying period can include several different periods which are computed as days worked or included in the reference period, which makes the rules for calculating the qualifying period very complex. It reminds the government that Article 23 of the Code states that the duration of the qualifying period may not be longer than what is needed to preclude abuse, both on the part of potential beneficiaries of the unemployment allowance and on the part of the institutions and services which administer it. It therefore asks the government to explain in its next report the reasons why it has introduced such qualifying periods for the unemployment allowance;

b. Article 68.d. According to the report, unemployment allowances are suspended for between one and thirteen weeks when the unemployed person has made an inaccurate, incomplete or belated declaration or has omitted to make a required declaration and has received or can receive allowances unduly as a result. Fraudulent intention is not required for a suspension to be applied; the mere fact of the irregularity being established is sufficient. The Committee of Ministers draws the government's attention to the fact that, in the cases in question, the abovementioned provision of the Code authorises the suspension of the benefit only if the person concerned has attempted to obtain it fraudulently;

c. Article 68.f. The report indicates that if the worker is responsible for his dismissal, he may receive a warning or his benefit may be suspended for a minimum of four weeks and a maximum of twenty-six weeks. He is deemed liable for his dismissal if he personally is guilty of misconduct which gave rise to it. The Committee of Ministers is bound to reiterate in this respect that the Code authorises the imposition of penalties only where the misconduct was wilful. The same rule also applies in cases where the unemployed person is penalised when support or rehabilitation measures are discontinued or fail owing to misconduct on his part.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Cyprus
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 16 April 1993 has been binding on Cyprus, which ratified it on 15 April 1992;

Whereas, when ratifying the Code, the Government of Cyprus stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Cyprus submitted its 14th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, these reports were examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that law and practice in Cyprus continue to give full effect to the parts of the Code which have been accepted.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by the Czech Republic
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 9 September 2001 has been binding on the Czech Republic, which ratified it on 8 September 2000;

Whereas, when ratifying the Code, the Government of the Czech Republic stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
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- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of the Czech Republic submitted its 5th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, these reports were examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

Concerning Part VII (Family benefits), Article 43 of the Code, that according to the fourth report, foreigners who are temporary residents in the country are entitled to state social support benefits only after 365 days from the date of registration for residence required by Law No. 326/1999 Coll. on Foreigners' Residence in the Territory of the Czech Republic;

Finds that the law and practice in the Czech Republic give full effect to the parts of the Code which have been accepted;

Decides to invite the Government of the Czech Republic to explain whether the qualifying period of 365 days established for foreigners who are temporary residents is compatible with Article 43 of the Code, under which the entitlement to family benefits for prescribed classes of employees or economically active population comprising the categories of the persons protected (Article 41) should be granted after only six months of ordinary residence.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Denmark
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 17 February 1974 has been binding on Denmark, which ratified it on 16 February 1973;

Whereas, when ratifying the Code, the Government of Denmark stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Denmark submitted its 34th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. Concerning Part XI (Standards to be complied with by periodical payments), that in its previous resolution, it observed that sickness, maternity and unemployment benefits are calculated on a daily basis, taking into account the hourly pay for which the person would have been entitled had he been working during the period of absence, subject to a maximum of DKK88.30 per hour or DKK3 267 per week fixed for the year 2005. This maximum, which is fixed by the government each year, corresponds to 50% of the weekly wage of the standard beneficiary selected under Article 65 of the Code (DKK6 519). Thus, notwithstanding the fact that the daily cash benefit should represent 100% of the daily pay in cases of sickness and maternity and 90% in the case of unemployment, in reality the standard beneficiary will be entitled to a maximum benefit of only 50% of his daily wage. Such a low maximum limit for earnings-related benefits may have the effect of transforming them into flat-rate schemes for the majority of workers with wages higher than that of the skilled manual male employee: their benefits consequently would not bear a reasonable relation to the benefit for the standard beneficiary, in contradiction with Article 65.5 of the Code;

II. concerning Part XII (Common provisions), Article 68, that the 34th report does not reply to the following questions raised in its previous resolution:

a. according to Law No. 327 of 18 May 2005, payment of social pension and other social benefits shall be suspended in the case of evasion of criminal prosecution or execution of a

sentence. The act applies to persons in custody, persons wanted by the police and in the case of a ruling for custody (*in absentia*). If the person concerned is not found guilty, the amount retained shall be repaid;

b. the report states that the employment injury benefits for loss of earning capacity and for permanent injury may be reduced or withheld where the beneficiary intentionally or by unlawful conduct or negligence has provoked or to a considerable extent contributed to the occurrence of industrial injury;

c. the report states that, if the survivor of the victim of employment injury opposes a post-mortem, the claim for compensation may lapse;

Finds that law and practice in Denmark continue to give full effect to the parts of the Code which have been accepted;

Decides to invite the Government of Denmark:

I. concerning Part XI (Standards to be complied with by periodical payments), recalling that flat-rate benefits can be assessed under Article 66 of the Code in relation to the wage of an ordinary adult male labourer, to specify in its next report which methodology of assessment – under Article 65 or 66 of the Code – best suits the Danish sickness, maternity and unemployment benefits. If it opts for Article 65, the government is invited to demonstrate that the maximum limit for the benefits in question complies with the requirements of paragraphs 3 and 5 of Article 65 and to make the calculation of their replacement rate on the basis of the daily or weekly wage of the standard beneficiary, and to confirm, on the basis of appropriate statistics requested under Article 65.7 or 66.5, that the iron and metal industry, from which the standard beneficiary is selected, employs the largest number of male workers in the country. Finally, taking into account the explanations given in the report on the different amounts of labour market contributions charged during employment and during the contingency, the government is invited to calculate the rate of benefits both in gross and net figures;

II. concerning Part XII (Common provisions), Article 68:

a. taking into account that suspension of benefits in the abovementioned cases may go beyond the grounds listed in Article 68 of the Code, to provide in its next report detailed explanations concerning the social benefits affected by the law which fall under the ambit of the Code and the manner in which the new legislation is applied in practice by the administrative and judicial authorities. The government is also invited to provide statistics on the number of cases of suspension of benefits under the law, together with its translation into English, if possible;

b. to explain, on the basis of the relevant judicial or administrative decisions, how the term 'negligence' is defined and how the extent to which such negligent behaviour might contribute to the occurrence of industrial injury is assessed. In this connection, the Committee of Ministers draws the government's attention to paragraphs e and f of Article 68 of the Code, which authorise the suspension of the benefit only where the contingency has been caused by a criminal offence or the wilful misconduct of the person concerned;

c. to explain the reasons for the provision stating that if the survivor of the victim of employment injury opposes a post-mortem the claim for compensation may be rejected, which is not foreseen among the grounds for the suspension of benefits listed in Article 68 of the Code.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Estonia
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code") and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 20 May 2005 has been binding on Estonia, which ratified it on 19 May 2004;

Whereas, when ratifying the Code, the Government of Estonia stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Estonia submitted its 2nd annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part III (Sickness benefit), Article 14, in relation to Article 68.f, that, according to section 60.1.a of the Health Insurance Act, an insured person shall not receive benefit for temporary incapacity for work if a doctor establishes that the illness or injury was caused by intoxication by alcohol, drugs or toxic substances. The Committee of Ministers has to point out in this respect that, according to Article 14 of the Code, read together with Article 8, the definition of the contingency covers incapacity for work resulting from any morbid condition, whatever its cause. Consequently, refusal to pay sickness benefit when the morbid condition was caused by intoxication by alcohol, drugs or toxic substances would be allowed under Article 68.f of the Code only where such intoxication resulted from the wilful misconduct of the person concerned, whose acts were of sufficient gravity and of a deliberate nature;

II. concerning Part IV (Unemployment benefit), Article 68.e and 68.f, that according to section 6.2.2 of the Unemployment Insurance Act, an insured person does not have the right to receive a benefit if the person left his or her previous work or service due to a breach of duties of employment or service, loss of confidence, an indecent act or an act of corruption.

III. concerning Part V (Old-age benefit):

a. Article 28.a, that according to the first report, the old-age pension of persons who retired before 31 December 1998 consists of the base amount and the length of service component, while the pension of persons commencing work after this date consists of the base amount and the insurance component;

b. Article 68.b, that according to sections 46.1 and 46.2 of the State Pension Insurance Act, payment of state pension is suspended during imprisonment and for the time the beneficiary is held in preventive custody before imprisonment;

IV. concerning Part VII (Family benefit), that according to Articles 42.a and 45 of the Code, the benefit shall be a periodical payment granted throughout the contingency, which covers the period from birth until the child reaches the school-leaving age or the age of 15 years, as may be prescribed (see Article 1.1.h of the Code). The Committee of Ministers notes that, under section 3 of the State Family Benefits Act, family benefits in Estonia are subdivided into periodical (monthly) benefits (child allowance, child-care allowance, single parent's child allowance, conscript's child allowance, foster care allowance) and one-time payments (childbirth allowance, adoption allowance, start in independent life allowance). Of the periodical benefits, only the child allowance and the single parent's child allowance (from birth until the child reaches 16 years of age) and the foster care allowance (until the child reaches 18 years of age or until the end of the school year when the child reaches 19 years of age) are paid throughout the contingency. Periodical benefits also include allowance for families with three or more children and families raising triplets, parent's allowance for families with seven or more children, school allowance and the disabled child allowance;

V. concerning Part VIII (Maternity benefit), Articles 49 and 52, that as stated in the first report, according to section 5.4.1 of the Health Insurance Act, all pregnant women residing in Estonia are entitled to medical care starting from the 12th week of pregnancy. The Committee of Ministers wishes to point out that Article 52 of the Code requires medical care to be provided throughout the contingency, which begins the moment the pregnancy is medically determined. This usually happens long before the 12th week, and from that moment onwards prenatal medical care provided to protected women should be free of charge without any cost sharing on beneficiary's part;

VI. concerning Part X (Survivors' benefit), Article 60.1, that according to section 20 of the State Pension Insurance Act, widows have the right to receive a survivor's pension upon the death of a breadwinner if she is pregnant (from the 12th week of pregnancy onwards) and does not work; if she is unable to work due to a permanent incapacity or is of pensionable age; if she is not employed and is raising the breadwinner's child who is under 3 years of age. The widow's right to a survivor's pension corresponds to the spouse's duty of maintenance provided in the Family Law Act. According to sections 22 and 23 of this Act, a husband is required to maintain his wife if she needs assistance and is incapacitated for work and during her pregnancy and childcare until the child attains 3 years of age;

Finds that the law and practice in Estonia give effect to the parts of the Code which have been accepted, subject to receiving additional information on the following points;

Decides to invite the Government of Estonia:

I. concerning Part III (Sickness benefit), to explain how section 60.1.a of the Health Insurance Act is applied in practice in the light of the requirements of the Code;

II. concerning Part IV (Unemployment benefit), to explain, with reference to appropriate administrative or judicial decisions, how this sanction is applied in practice, taking into account that the Code authorises the suspension of unemployment benefit in the abovementioned cases only where dismissal results from a criminal offence or wilful misconduct committed by the person concerned;

III. concerning Part V (Old-age benefit):

a. Article 28.a, to indicate whether the pension of the person retiring in 2007 after thirty years of service would be calculated for the twenty-one years worked before 31 December 1998, according to the first rule, and for the nine years worked after this date according to the second rule. The Committee of Ministers would also like the government to confirm that the dependent wife of a beneficiary of old-age pension would be granted the national pension if she had attained 63 years of age and had resided in Estonia for at least five years before making a pension claim (section 22.1.1 of the State Pension Insurance Act);

b. Article 68.b, to indicate whether, in accordance with this article of the Code, the portion of the pension in excess of the value of the maintenance of the beneficiary in custody or in prison continues to be granted to his dependants;

IV. concerning Part VII (Family benefit), to calculate the total value of the family benefits granted in accordance with Article 42.a on the basis of only those benefits that are paid periodically for the maintenance of children throughout the contingency;

V. concerning Part X (Survivors' benefit), Article 60.1, taking into account that the Code authorises making the widow's right to the survivors' benefit conditional on her being presumed to be incapable of self-support, to explain what social protection is available to a widow who is manifestly incapable of self-support because of her advanced age and the virtual impossibility of finding employment after many years of dependence on her husband, as well as to a younger widow who was also dependent on her late husband and is caring for at least one dependent child older than 3 years of age.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by France
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 18 February 1987 has been binding on France, which ratified it on 17 February 1986;

Whereas, when ratifying the Code, the Government of France stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of France submitted, its 19th and 20th annual reports on the application of the Code, for the period from 1 July 2005 to 30 June 2006 and 1 July 2006 to 30 June 2007, respectively;

Whereas, in accordance with paragraph 4 of Article 74, these reports were examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning social security management and financing, that according to the 19th report, which covers the period ending on 30 June 2006, there have been far-reaching changes over the past fifteen years in the way the financing of the General Social Security Scheme is structured. In addition to the phasing out of ceilings on the contribution base, the resources of the General Scheme have been extended to include levies on certain types of behaviour that are costly to the scheme (certain types of alcohol and tobacco, automobile insurance premiums) and other levies (on interest from assets and investments, which go to the family and old-age branches) intended to strengthen economic solidarity between the members of the scheme. Contributions have been introduced on the turnover of the pharmaceutical industry and the wholesale marketing of pharmaceutical products, on company profits and on polluting activities. A new funding instrument with the legal status of a tax – the General Social Contribution – was introduced in 1991 and has gradually increased since then. In 1996 the Social Debt Redemption Fund (CADES) was created for the purpose of clearing, by 2014, both the interest and the principal of the debt run up by the General Scheme. The resources of CADES come mostly from the CRDS – a fiscal levy to repay social security debt – the base for which extends to most incomes other than *minima sociaux* (means-tested benefits). The Social Security Audit Board analyses the accounts of the social security schemes every year and submits reports to parliament. Since 1996, the draft annual social security financing law has been accompanied by a report setting out the main lines of health and social security policy and the objectives that will determine the general conditions for financial balance in social security. The overall management of public social security policy has been

improved by the Organic Act (2005-881) of 2 August 2005, which enhances truth and fairness in the financial balancing of social security and introduces multi-annual budgeting for income estimates and spending targets.

The government's 20th report, which covers the period ending on 30 June 2007, focuses on the reduction of the social security deficit. Law No. 2006-1640 of 21 December 2006 on social security financing for 2007 provides for fewer new receipts (for the most part adjustments in pharmaceutical industry contributions), but has enabled several new measures to be taken thanks to the establishment in October 2006 of a National Committee to Combat Social Protection Fraud: penalties for incitement to refusal to comply with the prescriptions of the social security legislation, restitution of the *carte Vitale* (health identification card giving access to care) in the event of transfer of residence abroad, clarification of the status of workers seconded to France vis-à-vis the French social protection system, the introduction of standard-of-living components in means tests and a new national identification directory of insured persons.

a. The Committee of Ministers takes note of this information, which shows that greater attention has been paid in the last decade to the financing and sound management of social security in France. It notes that a worsening of the scheme's finances led the government to adopt a range of measures: broadening the contribution base and phasing out ceilings, introducing new taxes and contributions, establishing a special mechanism to repay the social debt, shifting the basis for management of the scheme to annual social security financing laws enacted by parliament and setting up the National Committee to Combat Social Protection Fraud. The Committee of Ministers notes with satisfaction that, as a result, the social security deficit declined significantly in 2006. It notes, however, that in its report "La sécurité sociale", September 2007, the Court of Auditors again draws attention to the extent of the social security system's indebtedness and the size of the deficit, and considers that the remedial measures currently applied by the government are not commensurate with the gravity of the situation. Although between 2004 and 2006 CADES took over €50 billion worth of deficits from the sickness branch of the General Scheme, the total deficits in other branches, financing funds and those foreseen for the coming years in the annex to the 2007 Social Security Financing Act are set to exceed €40 billion by 2009. In addition to its deficits, the social security schemes are encumbered by receivables from the state, which are increasing. With the introduction of accrual accounting for the state, it has been possible for the first time to draw up an exact list of the state's debts and loans with the social institutions. At 31 December 2006, the debts entered under this heading in the state's balance sheet amounted to €9.13 billion, i.e., an increase of nearly €1 billion in the course of the 2006 financial year. The Court of Auditors considers that, having acknowledged these debts in its 2006 accounts, the state has a duty to clear them as soon as possible. Furthermore, to avoid running up new debts, it is important that the state make sufficient budgetary provision to meet its commitments and to prevent debts from increasing year after year. The Court of Auditors further believes that a return to an annual balance in the social accounts must be the public authorities' priority.

In their joint response (appended to the court's report) to the Court of Auditors, the Minister of Labour, Social Relations and Solidarity, the Minister of Health, Youth and Sport and the Minister of the Budget, Public Accounts and the Public Service, fully endorse the demand for clarification of the financial relations between the social security system and the state. With the certification of accounts, conducted for the first time this year, both for the state and for the social security schemes, it has been possible to record the mutual debts exhaustively, and the government has decided to act on this by proceeding, as from this year, to clear the debt contracted by the state up to the end of 2006 and introducing rules of governance for the future to prevent any recurrence of debt. In particular, the state will ensure sound programming of budgetary allocations to social security for the offsetting of exemptions or benefits paid on the state's account. The government is thus following up on the court's recommendations.

The Court of Auditors' work shows that the deficits of the social security schemes and their financing funds in France remain very high, which means further carry-over to future generations of a significant part of the cost of social protection. The persistence of this situation runs counter to the logic of sustainable development for social security, which is what underpins the European Code of Social Security. In the Committee of Ministers' view, a continually mounting public debt sits ill with the principles of good governance of social security established by the Code, which the

state has a duty to apply and which confer on it a general responsibility for the management of risks, the provision of benefits and the maintenance of the system's financial balance. On the contrary, these principles require the state to clear former social security debts as soon as possible and make sufficient budgetary provision for future commitments. The Committee of Ministers notes that the French Government is determined to clear the debt contracted by the state up to the end of 2006 and to introduce rules of governance to prevent any recurrence of debt in the future. The Committee of Ministers would also point out that although measures to intensify the control of social security fraud appear necessary and logical at a time of heavy deficits in the schemes, any measure that has the effect of denying or suspending the benefits guaranteed by the Code for the persons protected must be applied within the limits prescribed by Article 68 and in observance of the principles of proportionality and equal treatment for non-nationals;

b. the Court of Auditors has also examined the loss in contributions to the General Scheme following the multiple exemptions, allowances, deductions and reductions in the contribution base that help to finance it. Sizeable resources are thus lost to social security to the benefit of a wide range of public policies. In fact, the largest state debts stem from exemptions from social security contributions (€4.5 billion). In the view of the court, there are now so many exemptions from the general rule that all income earned in exchange for or in the context of labour is taxable, that they ought to be reviewed to ascertain what purpose they serve and how effective they are. The court points out that the information available on the scope of the various allowance arrangements is far from complete, does not give an up-to-date (or even approximate) cost/benefit analysis of the various arrangements and allows no accurate assessment of the potential effects in the event of any change. The court considers that, in a context of large public deficits, such periodic reviews are the right approach and that the general aim should be the reduction of such arrangements.

According to the court, the exemptions from social contributions are concentrated mainly in small enterprises (59% of the exemptions on low wages benefit enterprises with fewer than 50 employees, representing a cost of €9.5 billion in 2005); while measures for profit sharing, participation, company pensions, stock options and free shares, *de facto* or *de jure*, benefit only enterprises with more than 200 employees and account for just over €10 billion in loss of revenue. Although there is little difference in these figures in terms of loss of revenue, the various arrangements generate marked distortions between the categories of enterprises benefiting from the exemptions and between the employees benefiting from the exempted income. The scale of the distortion warrants study of a reform of the employers' share of social contributions with a view to broadening the contribution base, *inter alia*, by eliminating or capping the exemptions from social contributions applied to the added value of the acquisition of stock options, the special flat-rate deductions granted to certain occupations and the advantages linked to retirement and termination of employment. Such a reform would have the advantage of being neutral in terms of forms of remuneration and size of enterprise. The government's 20th report on the Code shows clearly the growing tendency to promote enterprise (large and small) development at the expense of social security. The 2007 Social Security Financing Act establishes several new measures for small enterprises (adjustment of the contribution base for freelance occupations, extension of the ACCRE system (assistance for unemployed persons who start up or take over an enterprise) to enterprises in "sensitive urban areas") and a change in the social status of compensation for voluntary retirement in the context of forward management of jobs and skills in large enterprises. Law No. 2006-1666 of 21 December 2006 on financing for 2007 improves the overall relief on employers' social security contributions in very small enterprises (one to 19 employees) and provides for a partial exemption for enterprises in the research and development zones of "competitiveness clusters", as from 1 July 2007. Law No. 2007-290 of 5 March 2007, establishing a binding entitlement to housing and various measures to further social cohesion, introduces several provisions of similar scope on social contributions that apply to freelance workers covered by the micro-enterprise tax regime. Lastly, Law No. 2006-1771 of 30 December 2006 on amended finances for 2006 also introduces a temporary arrangement granting employers tax relief and social security exemptions in employment areas earmarked for revitalisation.

On the basis of the foregoing information, the Committee of Ministers observes that numerous arrangements for exemption, reductions or adjustments of the contribution base have been superimposed, resulting in a lowering of the product of the social security schemes to the benefit of a variable number of beneficiaries, whether workers or employers. Furthermore, the number and variety of these arrangements, the exact scale and impact of which are not known, not only

add to the complexity and financial instability of the system, but impose constraints on its management, undermining the latter's efficiency. The Committee of Ministers notes, from the ministers' joint response to the Court of Auditors, that the government is still intent upon ensuring sustainable resources for social security and subscribes to the court's idea of regularly reviewing the relevance of certain exceptions to the rule that social security contributions are payable on the various advantages in cash and in kind that workers receive in exchange for, or in the context of, work (the *niches sociales*).

The Committee of Ministers observes in this context that significant resources are withdrawn from social security to the benefit of economic interests which are sometimes far removed from the objectives of social security. To divert social security resources to other ends, however important they may be, is liable to adversely affect the sound management and financial balance of the system and lead to fraud or misuse of the resources. In any event, there is a need for more thorough checking that resources from the social allowances granted by the state are effectively and efficiently used. For its part, international social security law, while allowing social security resources to be used, for instance, to promote the national policy for full employment, specifies that where subsidies are granted by the state or the social security system to save jobs, the government must take the necessary steps to ensure that they are used as planned and to prevent fraud or any misuse by beneficiaries;¹

II. concerning Part II (Medical care), that in its resolution of 2005, the Committee of Ministers took note of Law No. 2004-810 of 13 August 2004 on sickness insurance, which was a new step in the far-reaching reforms made necessary by a deterioration in the financial position of the sickness insurance system. With regard to the financial effects of the reform, the government indicates in its 20th report that, following a drop in the deficit in 2005, sickness insurance expenditure again began to grow more rapidly than anticipated as from mid-2006, particularly expenditure on non-hospital medical care, daily sickness benefits and drugs. The warning system introduced by the 2004 reform raised the alert in the spring of 2007 and sickness insurance funds had to submit adjustment plans to limit the growth in expenditure. Accepted by the government, it will give rise to immediate measures that will reinforce control of medical care, development of outpatient surgery and fraud control, costs being shared fairly between insured persons, health professionals and the health product industry. In autumn 2007, the government planned to propose more structural mechanisms to parliament, with the aim of regulating health expenditure on a more sustainable basis. Study is under way of the best sources of financing for social security, including the replacement of a part of employers' social contributions by a supplementary value added tax, which would go to social security. Furthermore, sickness insurance is to be one of the six major public policies to be reviewed in 2007-08 in the context of the general revision of public policies introduced by the new government. The report confirms the latter's resolve to pursue the efforts for financial recovery and improvement of the quality and efficiency of the health system which began with the Law of 13 August 2004, while implementing an ambitious health policy and ensuring that users are afforded better access to care, prevention and drug innovation.

The Committee of Ministers takes due note of this statement. It also notes from the main indicators of the general state of health in France that the health of the population is good and tending to improve. The report indicates, however, that although the universal sickness cover (CMU) introduced in 2000 has contributed significantly to improving the health of the least affluent, there are still considerable disparities between men and women, between regions or between social categories, and that in certain population groups and for certain pathologies worrying situations still exist. Progress could be made by prevention and improved coverage, for all age groups. With regard to patient cost sharing, the government refers to the 2007 report of the High Council for the future of sickness insurance, which shows that the changes have had no major impact on the level of cover, which is offset in part by supplementary insurance, that there has been no departure from the principle that the basic schemes cover, in its entirety, major expenditure on care, and that the system is still consistent with the principles of solidarity. Nonetheless, it indicates instances of high non-refundable costs (for long-term illnesses, for example), particularly where the patient has no supplementary insurance (7 to 8% of the population). The Social Security Financing Act for 2007 raised the upper limit of income for entitlement to assistance for the purchase of supplementary

¹. Employment Promotion and Protection against Unemployment Convention, 1988 (ILO Convention No. 168), Articles 7 and 30.

health insurance from 15 to 20% above the income ceiling for access to supplementary CMU. There are also tax and social incentives for private insurers to offer supplementary contracts that show “responsibility” and “solidarity”;

III. concerning Part V (Old-age benefit), that in its resolution for 2004, the Committee of Ministers requested the government to provide detailed information on how Law No. 2003-775 of 21 August 2003 reforming pensions is affecting the application of each article of Part V of the Code. Since the law raises the length of full insurance to 160 quarters and reduces the pension for missing years, the Committee of Ministers also drew the government’s attention to the fact that an old-age benefit of the minimum level required by the Code (40% of the reference wage) must be secured in all cases for a standard beneficiary (with a wife of pensionable age) who has completed the qualifying period set out in Article 29, paragraph 1.a, of the Code (30 years or 120 quarters of contribution or employment), and that a reduced benefit must be secured at least after a qualifying period of 15 years, under paragraph 2.a of the same article. The Committee of Ministers nonetheless observes that the replacement rate in the government’s 19th report is calculated in reference to “a man of 60 years with 160 quarters of insurance in 2004, having a spouse of pensionable age with her own entitlements, and two children”. In this case, the full rate pension in 2004 reaches 52.7% of the reference wage (gross monthly wage of a male skilled worker in metallurgy and metal processing). Recalculated for a standard beneficiary of 60 years without children and with 120 quarters of insurance, the pension reaches only 37.5%, which is below the level prescribed by the Code. The report nonetheless indicates that although the old-age pension may be provided as from age 60, this is an option and not an obligation. For a full-rate (50%) pension to be granted at 60 years, the insured person must have accumulated 160 quarters under basic schemes as a whole. At age 65, on the other hand, the pension is paid at the full rate regardless of the length of insurance. If the insured person has been in the scheme for less than 160 quarters, the pension payable is pro rata.

Finds that law and practice in France continue to give full effect to the parts of the Code which have been accepted;

Decides to invite the Government of France:

I. concerning social security management and financing:

a. to indicate the laws and regulations on which the National Committee to Combat Social Security Fraud will base punitive measures;

to describe in its next report all the measures taken to restore the system’s financial balance;

b. noting the Ministers’ resolve to enhance the fairness of social levies, the Committee of Ministers requests the government to give its views on the Court of Auditors’ idea of a reform of the employers’ share of social contributions and a thorough review of existing distortions in the light of the different forms of remuneration and sizes of enterprise. Given the extent of the exemptions granted to employers, to indicate how far the application of these arrangements by enterprises is assessed and supervised by the competent authorities, and to specify the role played by the National Committee to Combat Social Protection Fraud;

II. concerning Part II (Medical care), in view of the scope of the measures for the financial recovery of the system and the fact that a growing share of sickness insurance costs continues to be shifted to patients, health professionals and the health products industry, to give, in its next report, an account of its new public health policy for sickness insurance, specifying the measures taken to ensure that the system is sustainable in the long term and that high-quality services are actually available for all;

III. concerning Part V (Old-age benefit):

a. to provide detailed information on how Law No. 2003-775 of 21 August 2003 reforming pensions is affecting the application of each article of Part V of the Code;

b. to include in its next report an updated calculation of the replacement rate of the old-age pension for a standard beneficiary of 65 years with 120 quarters of insurance, without children and with a spouse of pensionable age having no own entitlements;

c. to explain how the reduced pension paid after fifteen years of insurance is calculated, bearing in mind that according to the report, as from 2008 the wage taken as a basis for calculating the pension will be the average of the twenty-five years of insurance; and, with regard to the length of the qualifying period in particular, to indicate all breaks in the insurance career or periods of reduced activity that may be counted with a view to increasing the length of insurance.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Germany
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 28 January 1972 have been binding on the Federal Republic of Germany, which ratified them on 27 January 1971;

Whereas, when ratifying the Code and the Protocol, the Government of the Federal Republic of Germany stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of the Federal Republic of Germany submitted its 35th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes, concerning Part XI (Standards to be complied with by periodical payments):

a. that in response to its previous resolutions, the report provides updated calculations of the old-age, invalidity and survivors' pensions for a male skilled manual employee whose insurance history includes, in addition to thirty years of employment, nine months of military service, three years of training and two years of technical schooling, which show that these benefits attain the replacement rates prescribed by the Protocol. The Committee of Ministers notes that the technical aspects of the methods of calculation of pensions for the purpose of compliance with the Code, which have been the subject of the Committee of Ministers' dialogue with the government for some years, will be clarified through direct discussions between the competent national services and the experts from the Council of Europe and the ILO and that a first meeting on this point took place in February 2008;

b. that in its previous resolutions, it noted that the new pension adjustment rules established by the Act to Secure the Sustainable Financial Basis of the Statutory Pension Insurance (Pension Insurance Stability Act) (*Gesetz zur Sicherung der gesetzlichen Rentenversicherung – RV-Nachhaltigkeitsgesetz*), which entered into force on 1 January 2005, modified the formula for the

adjustment of pensions by introducing the sustainability factor (*Nachhaltigkeitsfaktor*) and the private retirement provision factor (*Riesterfaktor*), the combined application of which might have the effect of reducing the monthly pension payments. Such reductions, however, were deferred until 2010. The report indicates that due to potential cyclical fluctuations it is impossible to make a prediction of the rate by which the annual pension adjustments will decrease in future as a result of the new rules. In 2007, due to favourable economic developments, the application of the sustainability factor, which produced a higher adjustment, and the revised private retirement provision factor, which reduced the adjustment by 0.63%, resulted in a pension adjustment of 0.54% as from 1 July 2007. The Committee of Ministers recalls that old-age, invalidity and survivors' pensions were not adjusted in 2004-06, while in that period the consumer prices index increased by 1.80% and the index of wages by 0.91%. Employment injury pensions (*Verletztenrenten*) provided by the statutory accident insurance also were not adjusted on 1 July 2006;

Finds that the law and practice in Germany continue to give full effect to the parts of the Code and the Protocol which have been accepted, subject to clarification of the methods of calculation of the replacement rate of pensions;

Decides to invite the Government of Germany, concerning Part XI (Standards to be complied with by periodical payments), in view of the fact that the application of the new pension adjustment rules may lead to the loss of purchasing power for current pensioners, particularly after 2010, to continue to provide in its future reports detailed statistics on the effective adjustment of pensions to changes in the general level of earnings and the cost of living.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Greece
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 10 June 1982 has been binding on Greece, which ratified it on 9 June 1981;

Whereas, when ratifying the Code, the Government of Greece stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Greece submitted its 25th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part VI (Employment injury benefit) of the Code, Article 36.2, that since 1990, the Committee of Ministers has insisted on the need to re-establish in Greek legislation the right to long-term benefit at a reduced rate for victims of employment injury with incapacity of less than 50%. In reply, the government indicates that the actuarial services of the Social Security Foundation – Unified Workers' Insurance Fund (IKA-ETAM) have prepared an economically suitable solution to this question on the basis of the estimated number of potential beneficiaries (160 people annually), the degree of incapacity to be covered (33.3 to 49.9%), the possible level of the benefit (up to 40% of the full amount of invalidity pension) and the overall cost of the programme (approximately €768 000). In order to ascertain to what extent this solution will give effect to the corresponding provisions of the Code, the Committee of Ministers strongly hopes that the government will take all the necessary measures to organise in 2008 technical consultations between the actuarial services of IKA-ETAM and the experts of the Council of Europe and the ILO;

II. concerning Part XI (Standards to be complied with by periodical payments), that the amount of daily sickness benefits is equal to 50% of the amount of the estimated daily income of the insurance class to which the beneficiary belongs, and cannot be higher, including the increments for family responsibilities, than the amount of the estimated daily rate of the eighth insurance class. The basic amount and the rate of increases of the old-age and disability pensions also vary depending on the insurance class;

Finds that law and practice in Greece continue to give full effect to the parts of the Code which have been accepted, subject to the following point concerning Part VI;

Decides to invite the Government of Greece:

I. concerning Part VI (Employment injury benefit) of the Code, Article 36.2, taking into account the fact that cases of employment injuries resulting in invalidity of 33.3 to 49.9% are not registered and monitored by the “councils of invalidity”, to consider carrying out a sociological study and statistical survey on the conditions of life and work of victims of employment injuries with incapacity of less than 50%;

II. concerning Part XI (Standards to be complied with by periodical payments), to explain in its next report the system of insurance classes and its relation to the reference wage of the standard beneficiary selected by the government under Articles 65 and 66 of the Code for the calculation of the replacement rate of the benefits. The Committee of Ministers requests the government to make these calculations in such a way as to show that the maximum limit fixed for the rate of the benefits complies with the requirements of Article 65.3, while the minimum amount of the benefits attains the level prescribed in Article 66 of the Code.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Ireland
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 17 February 1972 has been binding on Ireland, which ratified it on 16 February 1971;

Whereas, when ratifying the Code, the Government of Ireland stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VII on "family benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Ireland submitted its 34th annual report on the application of the Code for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part IV (Unemployment benefit) of the Code in relation to Article 68.f, the report gives detailed explanations and statistics on the application of provisions, according to which a person may be disqualified from receiving unemployment benefit for a period of up to nine weeks for, *inter alia*, loss of employment through misconduct. Examples of misconduct that may lead to disqualification could include unexplained absence from work, bad time-keeping and disruptive or unreasonable behaviour at work. The government indicates that the deciding officer has to exercise judgment in a reasonable manner where an employer may supply evidence of terminating an employment because of misconduct and the employee contests the evidence. The Department of Social and Family Affairs has found that the broad principles and examples given in the guidelines for the deciding officers work very well in practice and do not require more prescriptive wording either in legislation or in the guidelines. The independent Social Welfare Appeals Office confirms that very few problems come to their attention regarding the manner of application of these provisions by deciding officers. The Committee of Ministers observes that, while the existing statistics and monitoring system do not reveal particular problems in the application of sanctions, the broad principles and examples given in the guidelines for the deciding officers do not reflect one of the basic principles governing the application of sanctions under the Code – that the misconduct of the person concerned may be punishable by the suspension of benefit only if such misconduct was wilful and has directly caused the contingency in question. This principle draws an important distinction between the much broader concept of 'misconduct' which may be sanctioned under the labour law, and those elements of misconduct which may entail further sanctions under the social security law, so as not to unduly deprive the person already suffering the contingency through his non-wilful misconduct of protection guaranteed by

the social security scheme in such cases. In the Irish system where the evidence of terminating an employment because of misconduct is submitted by the employer and has to be contested by the employee, protecting the entitlement of the latter to the unemployment benefit under the Code would require the deciding officer, in addition to applying a reasonable and common-sense approach, to specifically ascertain that the evidence at his or her disposal proves that the misconduct was due to the wilful behaviour of the said employee, so as to exclude cases where this behaviour, though blameworthy and giving sufficient grounds for dismissal, was not wilful and should not result therefore in suspension of his or her unemployment benefit;

II. concerning Part VII (Family benefit), Article 43, following the recommendations made in its previous resolutions concerning the introduction by the 2004 Social Welfare (Miscellaneous Provisions) Act of a habitual residence condition for the child benefit scheme, the government informed the Committee of Ministers in January 2007 that the Child Benefit Guidelines have been amended to ensure full compliance with Article 43 of the Code. Consequently, employees from non-EEA (European Economic Area) countries who have at least one month of insurable employment and whose families also reside with them in Ireland are now treated as habitually resident for the purpose of claiming child benefit;

III. concerning Article 29.5 of the Code, notes that the government is seeking the Committee of Ministers' view on the provisions of this paragraph. Article 29.5 deals with the situation where the beneficiary, because of his or her advanced age at the moment the pension scheme enters into force, is unable to fulfil the qualifying conditions (fifteen years of contribution or employment) to obtain a reduced pension under Article 29.2. One of the options foreseen consists in paying a reduced pension "under prescribed conditions" to be determined in national legislation. The government understands that the phrase "under prescribed conditions" allows the retention of a minimum contribution requirement and gives a degree of flexibility to prescribe the minimum requirement most appropriate to the situation in the country concerned. The government considers that Article 29.5 does not require payments to be made in all cases, no matter how few contributions have been paid. The Committee of Ministers wishes to point out in this respect that Article 29.5 applies only to pension schemes "conditional upon a minimum period of contribution or employment", which, by definition, do not require pension to be paid in all cases, regardless of how few contributions have been paid by the person concerned;

Finds that law and practice in Ireland continue to give full effect to the parts of the Code which have been accepted;

Decides to invite the Government of Ireland:

I. concerning Part IV (Unemployment benefit) of the Code, in relation to Article 68.f, taking into account the broad discretionary power vested in the deciding officer and in order to avoid such situations in practice, to consider including in the guidelines for the deciding officers a reference to the general principle established in Article 68.f of the Code illustrated by appropriate examples.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Italy
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on2008
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 21 January 1978 has been binding on Italy, which ratified it on 20 January 1977;

Whereas, when ratifying the Code, the Government of Italy stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Italy submitted its 22nd annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part VI (Employment injury benefit), Article 36 of the Code, the information contained in the government's report, as well as the additional information provided in March 2007 in reply to questions raised in the Committee of Ministers' previous resolution, which indicates the revised minimum and maximum amounts of the employment injury benefit paid to beneficiaries or their dependants since 1 July 2005;

II. concerning Part VII (Family benefit), that from the government's report on ILO Convention No. 102, the monthly amount of the family allowance in 2006 ranged between a minimum of €10.33 and a maximum of €965.26. According to the 21st report on the Code, the total value of the family benefits paid in 2005 in respect of children below 18 years of age (estimated at €2 830 000 000) amounted to 1.77% of the reference wage of an ordinary adult male labourer (€15 991.36) multiplied by the total number of children of all residents (9 979 005). According to the 22nd report and the additional information provided in March 2007, the total value of the family benefits paid in 2006 in respect of children under 18 years of age or without age limit in case of total permanent incapacity increased to €3 400 000 000 and reached the level of 4.76% of the said reference wage (€16 209.76) multiplied by the total number of children of all residents (10 041 741). The amount of €3 400 000 000 was derived from an overall figure of €4 727 073 921, representing the total amount of family benefit paid in 2006 to families with or without children, estimated on the occasion of the reform of family benefit introduced by the 2007 Finance Act;

III. concerning the administration and organisation of social security. Among the legislative changes made by Law No. 296 of 27 December 2006 (the 2007 Finance Act), the government's

22nd report highlights the measures to ensure the financial balance of the social security system between income from contributions and expenditure on welfare benefits and to step up measures against non-payment and fraud, namely:

- increasing income and strengthening action for the recovery of unpaid contributions through inspections and agreements with banks and occupational associations;
- intensifying measures against unauthorised work and the non-payment of contributions through the widespread use by the inspectors of new computerised procedures for detecting and monitoring high-risk situations through the preparation of information from composite databases. The National Social Security Institute (INPS) signed an agreement in 2007 with the Ministry of the Interior with a view to simplifying procedures for the issue and renewal of residence permits for immigrants through the exchange of information on the employment situation of foreign citizens. The cross-checking of data will also make it possible to identify links between immigration and unauthorised work, thereby facilitating action to ensure greater compliance with requirements relating to social insurance and contributions;
- the introduction of the principle of the regular payment of contributions for access to statutory and contributory benefits governed by labour and social security legislation. This major innovation allows the INPS to have an effective means of reorganising the administrative process for the collection of contributions;
- with a view to combating non-payment of contributions as well as the payment by the government of benefits to which the beneficiaries are not entitled, even for agricultural enterprises, the possibility of denouncing an employer under criminal law for failure to pay social security and assistance contributions has been introduced;

Finds that the law and practice in Italy give full effect to all parts of the Code that have been accepted, subject to receiving detailed information on the calculation of the replacement rate of employment injury benefit;

Decides to invite the Government of Italy:

I. concerning Part VI (Employment injury benefit), Article 36 of the Code, to indicate in its next report the calculation of the replacement rate of the benefit paid for the contingencies covered by paragraphs b, c and d of Article 32 of the Code to a standard beneficiary whose wage equals the reference wage determined under Article 65 or 66 of the Code;

II. concerning Part VII (Family benefit), to bear in mind in this respect that, in accordance with Article 44.b read in conjunction with Article 1.1.e, of the Code, the total value of family benefit should be calculated with respect either to children under school-leaving age or children under 15 years of age, as may be prescribed. It would therefore be grateful if the government would include in the calculation of the total value of family benefit in its future reports only the benefit that is paid for the maintenance of all children under 18 years of age, excluding the benefit paid in respect of older children and to families without children. The Committee of Ministers notes that such disaggregated statistics are not compiled by the government and would necessarily be an estimate. The Committee of Ministers asks the government to explain how such an estimate would be made in the light of the changes in the family benefit system introduced by the 2007 Finance Act, and to supply any other statistical or sociological studies showing the effectiveness of the Italian system of family benefit in defraying the costs of the maintenance of children for the various categories of persons protected;

III. concerning the administration and organisation of social security, to provide more information in its next report on the application of these various measures in practice, including the number of inspections carried out, the violations reported and the nature of the penalties imposed. The Committee of Ministers wishes to recall in this context that, although the intensification of measures to combat evasion and social security fraud appears necessary and logical in order to maintain the financial balance of the system, any measure which results in the denial or suspension of the benefits guaranteed by the Code for protected persons must be exercised within

the limits prescribed by Article 68 and in compliance with the principles of proportionality and the equal treatment of non-nationals.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Luxembourg
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 4 April 1969 have been binding on Luxembourg, which ratified them on 3 April 1968;

Whereas, when ratifying the Code and the Protocol, the Government of Luxembourg stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of Luxembourg submitted its 39th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that law and practice in Luxembourg continue to give full effect to the provisions of the Code and Protocol, subject to the point below;

Decides to invite the Government of Luxembourg to provide information on the application of Article 18 of the Code requested in the Committee of Ministers' previous resolutions.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by the Netherlands
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since that date have been binding on the Netherlands, which ratified them on 16 March 1967;

Whereas, when ratifying the Code and the Protocol, the Government of the Netherlands stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of the Netherlands submitted its 40th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part II (Medical care) of the Code, that in its resolution of 2006, it raised a number of questions in relation to the radical reform of the Netherlands health insurance system, which entered into force on 1 January 2006. It has found no replies to these questions either in the government's report or in the publication of the Ministry of Health, Welfare and Sport *Health insurance in the Netherlands: the new health insurance system from 2006* provided by the government;

II. concerning Part IV (Unemployment benefit) in conjunction with Article 68.f that, under Article 68.f of the Code, sanctions in respect of claimants of unemployment benefits who are deemed to be "culpably unemployed" under the Dutch law may apply only in cases where unemployment has been caused by the wilful misconduct of the person concerned, and that person's failure to protest against the dismissal does not amount to acceptance that the misconduct was wilful. In reply, the government indicates that, from 1 October 2006, the unemployment benefit will no longer be refused due to the fact that the employee accepts or does not oppose his or her dismissal. The Committee of Ministers welcomes this change in the regime of sanctions applied to claimants of unemployment benefits, which will permit better application of

the corresponding provisions of the Code. The government further refers to the new definition of “culpable unemployment” in Article 24.2 of the Unemployment Insurance Act, which, in its opinion, fulfils the obligations of the Code: an employee is considered to be culpably unemployed when the unemployment occurred due to compelling reasons in the sense of the provisions of Article 678 of Book 7 of the Civil Code and the employee is culpable for his or her unemployment. The Committee of Ministers notes that, among the compelling reasons for the termination of employment, Article 678.k and I mention cases when the employee “neglects his duties in a flagrant way” or “is not able to perform his duties due to his own recklessness”;

III. concerning Part V (Old-age benefit), that under the National Old-Age Pensions Act (AOW), all residents over 65 years of age receive an old-age pension, which is a fixed amount paid in full after fifty years of residence in the country. The pension accrues from the age of 15 until the age of 65 each year by 2% of the full amount of benefit. Each year during which the person concerned was not insured results in a 2% reduction of the full amount of the pension. The replacement rate of the old-age pension is calculated in the report for the amount of the pension received by couples after thirty years of insurance, in relation to the reference wage of an ordinary adult male labourer determined under Article 66 of the Code. The report states that Article 29 of the Code, which prescribes a maximum qualifying period to be taken into account for the calculation of the benefit, is “not applicable”. The Committee of Ministers agrees that the provisions of Article 29, which refer to schemes where the benefit is conditional upon a qualifying period of contribution or employment, are not applicable to the Dutch old-age pension scheme, which is based on residence in the country. Such a scheme, however, should comply with Article 29.1.a, which guarantees the minimum level of the old-age pension prescribed by the Protocol to any person protected who has completed, prior to the contingency, a qualifying period of twenty years of residence.

Furthermore, the Committee of Ministers observes that the scope of persons protected under Part V of the Code is determined in the report in relation to Article 27.c, which covers all residents whose means during the contingency do not exceed prescribed limits. Such coverage of the scheme permits to take into consideration means-tested benefits which are provided as of right, in accordance with the rules laid down in Articles 28.b and 67 of the Code, as amended by the Protocol. In this connection, the Committee of Ministers notes, from the government’s report on ILO Convention No. 128, that, in accordance with the Work and Social Assistance Act (WWB), persons over 65 years of age with incomplete national old-age pension are entitled to a top-up benefit, which would increase their pension to the same amount as persons that receive a complete national old-age pension;

IV. concerning Part VI (Employment injury benefit). The report indicates that, in a judgment passed in September 2006, the Central Appeals Tribunal, the highest judicial authority in the area of social security, has given direct effect in the Dutch legal system to Articles 32, 34 and 38 of the Code, which prohibit cost-sharing by the protected persons in the cost of medical care required in the case of employment injury. The tribunal has ruled that cost-sharing pursuant to the Exceptional Medical Expense Act by persons in need of long-term intramural care as a consequence of occupational illness or industrial accident contravenes Part VI of the Code. The report states that, as a result of this ruling, the Government of the Netherlands “has made a (provisional) denunciation of Part VI of the Code” and is deliberating subsequent measures, including ratification of the revised Code, which allows states whose insurance systems had abandoned the concept of employment injury to meet the required standards of protection through compensatory benefits provided under other branches of social security. With regard to the ruling of the Central Appeals Tribunal, the Committee of Ministers wishes to confirm that Part VI of the Code does not allow any participation by victims of employment injuries in the cost of medical care mentioned in Article 34.2, which should be provided free of charge throughout the contingency. With regard to the government’s intention to denounce Part VI of the Code, the Committee of Ministers observes that, according to the denunciation procedure set out in Article 81 of the Code, it can do so at the end of each five-year period since the date on which the Code entered into force for the Netherlands. The next such opportunity will present itself on 17 March 2008, provided that the Secretary General of the Council of Europe had already been notified by the Netherlands of its intention to denounce Part VI of the Code one year prior to this date. Otherwise, the Netherlands stands bound by the obligations accepted under Part VI of the Code until the end of the subsequent period of five years. Finally, with regard to the government’s intention to ratify the

revised Code in order to comply with the obligations embodied in Part VI of this instrument through compensatory benefits provided under other branches of social security, according to the provisions of Article 3.3 of the revised Code, the Committee of Ministers wishes to remind the government of the possibility of soliciting technical advice and assistance from the Council of Europe. This may be all the more necessary taking into account, on the one hand, the higher standards of protection established by the revised Code and, on the other hand, the radical reforms of the health insurance system and of the disablement benefit scheme, which are currently being implemented in the country. In this connection, the Committee of Ministers observes, for example, that while Article 3.3 of the revised Code does not permit to make the entitlement to benefits provided to victims of employment injuries conditional on any qualifying period, the new Work and Income (Employment Capacity) Act of 10 November 2005 (WIA) contains provisions (sections 7.1.1(3 and 4), 7.1.5(1)), which subject the entitlement to benefit in case of partial incapacity (WGA) to a qualifying period of insured employment;

V. concerning Part IX (Invalidity benefit), Article 54, as amended by the Protocol, and Article 56.1:

a. the report indicates that under the terms of the Work and Income (Employment Capacity) Act of 10 November 2005 (WIA), an individual is defined as wholly incapacitated if he cannot earn more than 20% of his previous salary, which implies a loss of earning capacity of at least 80%. Wholly and permanently incapacitated employees are entitled to the invalidity (IVA) benefit of 75% of the (maximum) daily wage. The Committee of Ministers observes that the threshold of 80% incapacity established by the WIA is set much higher than the level of two thirds fixed by the Protocol for defining a wholly incapacitated person unable to engage in any gainful occupation. It understands that a person who has lost 66.6% of his earning capacity would not be considered as wholly incapacitated and would not be entitled to the IVA benefit. Such a person would fall under the definition of a partially incapacitated employee who becomes entitled to the WGA benefit. The WGA benefit consists initially of a wage-related payment of 70% of the (maximum) daily wage paid out for a certain period depending on the individual's employment history (one and a half years for fifteen years of employment history). After this, partially incapacitated individuals who are unemployed will be entitled to a follow-up WGA benefit which is equivalent to 70% of the minimum wage multiplied by the percentage of incapacity. Partially incapacitated individuals who are working can apply for a wage supplement. According to the report, the non-working average employee with incapacity of 65% to 80% will receive a benefit payment of 26% of his last-earned wage (€32 000); for an employee on a maximum daily wage (€47 000), it will be 18%. With respect to the calculation of the level of invalidity benefit made in the report in respect of the standard beneficiary, the Committee of Ministers notes that, while indicating the degree of invalidity of between 60% and 80% which corresponds to the WGA benefit, the calculation was made in fact for the IVA benefit paid in case of 80% to 100% incapacity, as indicated in the report on ILO Convention No. 128;

b. the Committee of Ministers notes that the WGA benefit is designed with a view to oblige partially incapacitated employees to use their residual earning capacity to the fullest extent possible;

c. the Committee of Ministers notes that the amount of the invalidity benefit is calculated in the report under Article 66 on condition that the family of the beneficiary has no other income or social security benefits;

VI. concerning Part X (Survivors' benefit), that the widow's pension allocated under the terms of the General Surviving Relatives Act (ANW) is a fixed amount, which in June 2006, according to the 40th report on the Code, was €799.72 net per month and in June 2007, according to the government's report on ILO Convention No. 128, €983.30 net per month.;

The Committee of Ministers further notes that the family allowances during employment included the child tax credit (€84.50), while the family allowances during the contingency included instead a semi-orphan pension (€248.29);

VII. concerning Part XI (Standards to be complied with by periodical payments):

a. that while, according to Dutch law, sick pay, maternity benefit, unemployment benefit and invalidity benefit should amount to 70% of the gross salary, the government's report calculates the level of the benefit as 70% of the net reference wage. The replacement rate is determined by comparing the net amount of the benefit with the net amount of the reference wage and the net amount of the child benefit due to the standard beneficiary;

b. concerning Article 44 of the Code, that the calculation of the total value of the family benefits was made in relation to the net amount of the minimum legal wage (€1 176.47 per month in 2007), which, by definition, would be lower than the gross minimum legal wage (€1 264.80 in 2005) and still lower than the gross wage of an ordinary adult male labourer which should be used for this calculation;

c. that calculations made in the 40th report (2007) include, in addition to the basic amount of the child benefit for two children born after 1 January 1995 (€118.60 net per month), also child tax credit (€84.50) without indicating whether it is for one or two children. In comparison, the 38th report (2005) included, instead of the child tax credit, the general tax credit for the partner (€152.08). The total amount of the family allowances taken into account in the 38th report was €269.83 net per month, which is much higher than the amount of €201.95 used in the 40th report for the calculation of the sickness, unemployment and maternity benefits or the amount of €203.10 (= €118.60 + €84.50) used for the calculation of the employment injury, invalidity and survivors' benefits. The Committee of Ministers further notes that statistics on family benefit given in the government's reports on ILO Conventions Nos. 102 and 128 differ from those given in the reports on the Code for the same time base. Thus, the report on ILO Convention No. 102 for the period 2001-06 includes in the calculation of the sickness benefit for 2005 the family allowance of €117.75 net per month provided for two children between the ages of 0 and 6 born after 31 December 2004, while the report on ILO Convention No. 128 for 2007 includes in the calculation of both invalidity and survivors' benefit the family allowance of €201.95 net per month as the "basic amount applicable to families with two children born on or after 1 January 1995 and between 0 and 5 years of age";

Finds that the law and practice in the Netherlands gives full effect to all the parts of the Code and the Protocol, with the exception of Part VI which the government intends to denounce;

Decides to invite the Government of the Netherlands:

I. concerning Part II (Medical care) of the Code, to supply in its next report detailed information on the questions asked in 2006 in relation to the reform of the Netherlands health insurance system;

II. concerning Part IV (Unemployment benefit) in conjunction with Article 68.f, that taking into account that neglect and recklessness on the part of the employee leading to his dismissal may not necessarily constitute "wilful misconduct" which may be sanctioned under Article 68.f of the Code, to explain how these provisions are applied in practice;

III. concerning Part V (Old-age benefit), to show in its next report that the amount of the Dutch old-age pension for a couple after twenty years of residence would reach 45% as prescribed by the Protocol. It would also like the government to explain how the fixed amount of the full old-age pension for a couple is determined, taking into account that the amount given in the report on the Code (€1 123.39 net per month) differs from the same amount given in its report on ILO Convention No. 128 (€1 139.24). It would like to draw the government's attention to the fact that for the purpose of Part V of the Code a "couple" should be composed of a man with dependent wife both of pensionable age.

The Committee of Ministers would invite the government, if it considered it necessary, to include in the calculation of the level of the old-age benefit requested above any complementary social assistance benefit provided under the WWB to a married couple where both spouses are over 65 years of age and to specify the nature of the means test and the substantial amounts prescribed under Articles 27.c and 67 of the Code;

IV. concerning Part IX (Invalidity benefit), Article 54, as amended by the Protocol, and Article 56.1:

a. to show in its next report that the follow-up WGA benefit paid to a partially incapacitated employee with dependent wife and two children, who has become a two-thirds invalid after fifteen years of employment history and who remains unemployed afterwards, will attain throughout the contingency the level of 50% of the reference wage prescribed by the Protocol;

b. to specify the nature and the extent of the legal obligations placed by the WIA in this respect on a person who has a residual earning capacity of one third (33%);

c. to indicate whether the IVA benefit provided to a wholly and permanently incapacitated employee is means tested and to what extent family income other than earnings of the beneficiary is taken into account. It draws the government's attention to the fact that, in an invalidity insurance scheme covering employees, like in the Netherlands, calculation of the rate of the benefit under Article 66 should be done without taking into account any additional benefits which may be awarded subject to an income test, such as a top-up benefit provided under the Supplementary Benefits Act;

V. concerning Part X (Survivors' benefit), to indicate the change in the rules for fixing the amount of the widow's pension which explains this substantial increase and to explain why the child tax credit is not paid during the contingency; whether the amounts of the child tax credit and the semi-orphan pension are given in respect of one child or two children (the standard beneficiary for this branch being a woman with two children); whether the given amount of the semi-orphan pension includes a holiday allowance and if it is gross or net amount; how the semi-orphan pension varies according to the age of the child and the income situation of the eventual caretaker of the child;

VI. concerning Part XI (Standards to be complied with by periodical payments):

a. to provide in its next report examples of the real calculations by the responsible agencies of the amounts of benefits paid out to an insured person whose gross salary corresponds to the gross wage of the skilled manual male employee. The Committee of Ministers requests the government to indicate also the rate of general taxation and social security contributions applied to gross income received from employment as well as, where applicable, to income received from social benefits, including child benefit;

b. Article 44 of the Code, to include in its next report updated calculations of the total value of the family benefits in relation to the gross wage of an ordinary labourer as determined in accordance with the rules laid down in Article 66;

c. to explain these differences, as well as the nature of the child tax credit, indicating in particular whether it is income-tested.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Norway
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since that date have been binding on Norway, which ratified them on 25 March 1966;

Whereas, when ratifying the Code and the Protocol, the Government of Norway stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of Norway submitted its 40th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part IV (Unemployment benefit) of the Code, Article 20 (in conjunction with Article 68.h), with reference to its previous resolutions which it has been making for a number of years, the Committee of Ministers recalls that, according to section G.4 of the guidelines of the Directorate of Labour, in order to be regarded as a genuine jobseeker, an applicant for unemployment benefit must be willing and able to accept any work that is remunerated according to a collective wage agreement or a local custom. Section G.4.1 details that the obligation to take any work means that applicants for employment cannot make reservations as regards the type of occupation they will work in and must be willing to accept any work they are physically and mentally fit for, even in occupations for which they are not trained or in which they have no previous experience. The applicant's skill, qualification, acquired experience and length of service in former occupation – criteria which are normally used for assessing the suitability of employment – are not taken into account when the decision on the withdrawal of the benefit is taken following the jobseeker's refusal to accept the employment offered on these grounds. The Committee of Ministers wishes to observe in this respect that, according to the definition of the contingency contained in Article 20, the aim of the Code consists precisely of offering unemployed persons protection during the initial period of unemployment from the obligation to take up jobs that are not suitable to their acquired professional and social status. The Committee of Ministers would once

again insist on the need of the government to be asked to bring the guidelines of the Directorate of Labour in conformity with Norway's obligations under ratified international social security instruments, which forbid to apply sanctions for refusing to accept unsuitable job offers at least during the initial period of thirteen weeks provided for in Article 24 of the Code and extended to twenty-six weeks in accordance with ILO Convention No. 168, also ratified by Norway;

Finds that the law and practice in Norway continue to give full effect to all the parts of the Code and the Protocol which have been accepted, subject to disallowing to apply sanctions for refusing to accept unsuitable job offers during the initial period of unemployment.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Portugal
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 16 May 1985 have been binding on Portugal, which ratified them on 15 May 1984;

Whereas, when ratifying the Code and the Protocol, the Government of Portugal stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of Portugal submitted its 22nd annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning the Sustainable development of social security, that following the entry into force of Framework Act (Law No. 32/2002) of 23 December 2002, establishing a new structure for the social security system, extensive reforms have been carried out in the various branches and have been covered by a broad public discussion (as was the case in 2006 on the occasion of the revision of the legal framework for unemployment protection). The signature in October 2006 of the Agreement on Social Security Reform between the government and the social partners with a view to ensuring the financial equilibrium of the social security system in the face of current economic, social and demographic challenges constituted a new stage in this process. In accordance with the Public Administration Restructuring Programme (PRACE), Legislative Decree No. 211/2006 of 27 October 2006 approved the structure of the Ministry of Labour and Social Solidarity. In 2007 a new Framework Act on the social security system, Law No. 4/2007 of 16 January 2007, once again reformed the structure of social security, among other measures by introducing optional public and private supplementary capitalisation schemes. Finally, Legislative Decree No. 52/2007 of 8 March 2007 reactivated the National Social Security Council, which is an advisory body through which the social partners and other social organisations participate in the management of social security policy.

The Committee of Ministers is bound to note that Portugal is in the process of establishing a new social security system redesigned for the 21st century. Although there is no unique model to be followed in this respect, in order to ensure their sustainable development, all systems should nevertheless comply with certain basic principles of sound governance and social cohesion, compliance with which is under the general responsibility of the state. Moreover, this responsibility takes on particular importance during such periods of restructuring, not only in the national context to ensure the survival of the system, but also at the international and regional levels with a view to maintaining the regulatory framework established by the common provisions of international and European law. In view of the profound and evolutionary nature of the social security reforms in Portugal, the Committee of Ministers considers it necessary to follow closely developments in the situation from the point of view of both the application of the European Code of Social Security and of the relevant ILO conventions;

II. concerning Part II (Medical care) of the Code, Article 10, the detailed information provided by the government concerning the current reform of the health system in Portugal and the main initiatives to improve the quality and effectiveness of care and to contain costs. It notes in particular that, for the first time in several decades, the financial situation of the national health system in 2006 was in surplus by €167 million. The containment of the costs of primary care and in public hospitals with an enterprise status (EPE) was accompanied by an increase in productivity and a reduction in the average waiting time for surgery, which fell from 8.6 months at the end of 2005 to six months during the first quarter of 2007;

III. concerning Part IV (Unemployment benefit), that the legal framework for unemployment protection was modified by Legislative Decree No. 220/2006 of 3 November 2006, including in relation to the following aspects: clarification of the concept of suitable employment; reduction of the qualifying period for access to unemployment insurance; modification of the period during which unemployment benefit is provided, based on the age of the beneficiary and the length of the contribution period; and changes to the rules relating to early retirement;

IV. concerning Part V (Old-age benefit), that the Legislative Decree No. 187/2007 of 10 May 2007, which entered into force on 1 June 2007, established a new legal framework for old-age and invalidity benefits under the general social security scheme. Among the innovative measures, the Committee of Ministers notes in particular:

- the acceleration of the transitional period towards the calculation formula introduced by Legislative Decree No. 35/2002 of 19 February 2002;
- the introduction of a financial viability factor in the calculation of pension benefits as from 2008, which is the outcome of the relationship between average life expectancy in 2006 and the figure for the year prior to the date on which the pension is claimed; and
- the changes in the rules of the scheme relating to the flexibility of the retirement age, which takes the form of a penalisation of 0.5% for each month prior to the age of 65 years.

V. concerning Part XI (Standards to be complied with by periodical payments), Article 65.10:

a. In reply to its previous resolution, the government shows in its report that the adjustment rate of pensions indexed to the minimum monthly guaranteed earnings (RMMG), namely minimum old-age and invalidity pensions under the general scheme, pensions under non-contributory and assimilated schemes and under the special social security scheme for agricultural activities, benefited during the period 2003-06 from increases that were higher than the inflation rate, in accordance with Article 65.10, of the Code. The report also indicates that, in accordance with the new Framework Act on the Social Security System, Law No. 53-B/2006 of 21 December 2006, established the Social Support Index (IAS) and determined new rules for the adjustment of pensions and other social benefits under the social security system. As from 1 January 2007, the IAS replaced the earlier RMMG as the reference index for benefits. The value of the IAS is updated annually on the basis of the real growth of the gross domestic product (GDP), corresponding to the mean of the average annual growth rates for the past two years, and based on the average variation over the past twelve months of the Consumer Price Index (CPI), without

housing, which is available on 30 November of the year prior to the year to which the adjustment is related;

b. In its previous resolutions, the Committee of Ministers requested explanations on the manner in which pensions provided in respect of employment injury by private insurance companies have been revalued and adjusted. The report indicates in this respect that the legal framework governing the Employment Accident Fund (FAT) was modified by Legislative Decree No. 185/2007 of 10 May 2007, so as to guarantee insurance companies the reimbursement of the amounts required for the adjustment of pensions for permanent incapacity at a rate equivalent to or higher than 30% or for death, as well as the adjustment of the supplementary benefit for the assistance of another person. This legislative decree establishes a specific system for the annual adjustment of employment injury pensions based on the adjustment references (the CPI and the growth in GDP) envisaged by the new system for the adjustment of social security pensions, with the exclusion of step adjustments over contribution careers. The Committee of Ministers hopes that the new system for the adjustment of employment injury pensions will continue to maintain the real value of the benefits in relation to the cost of living;

Finds that the law and practice in Portugal give full effect to all the parts of the Code and the Protocol which have been accepted;

Decides to invite the Government of Portugal:

I. concerning the Sustainable development of social security, to continue providing detailed information on any new legislative, administrative or judicial measures adopted giving effect to the Agreement on Social Security Reform of 2006;

II. concerning Part II (Medical care) of the Code, Article 10, to indicate the other criteria that are used in Portugal to monitor and measure the improvement in the general health condition of the population and the effectiveness of the action of the national health system in this respect. It would also be grateful to be provided with information on the new rules relating to the cost-sharing by beneficiaries in health care, including the new scale of cost-sharing approved by Order No. 395-A of 30 March 2007;

III. concerning Part IV (Unemployment benefit), to include in the next report a detailed evaluation of the impact of these changes on the application of each of the articles of Part IV of the Code, with particular reference to the provisions relating to suitable employment and the qualifying period;

IV. concerning Part V (Old-age benefit), in view of the new rules for the calculation of old-age pensions introduced as of January 2008, to recalculate in its next report the replacement rate of the old-age benefit for a standard beneficiary who has completed a qualifying period of thirty years;

V. concerning Part XI (Standards to be complied with by periodical payments), Article 65.10, to explain the advantages for beneficiaries of the transition from the former system of indexation related to the RMMG introduced in 2002 to the new system of the adjustment of pensions related to GDP and the CPI and if it would demonstrate, based on statistical data for the period covered by its next annual report, that the adjustment rate of pensions follows variations in the general level of earnings and the cost of living, in accordance with Article 65.10 of the Code.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Slovenia
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 27 February 2005 has been binding on Slovenia, which ratified it on 26 February 2004;

Whereas, when ratifying the Code, the Government of Slovenia stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Slovenia submitted its 2nd annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that law and practice in Slovenia give full effect to the parts of the Code which have been accepted.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Spain
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 9 March 1995 has been binding on Spain, which ratified it on 8 March 1994;

Whereas, when ratifying the Code, the Spanish Government stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Spain submitted its 12th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that the law and practice in Spain give full effect to all the parts of the Code which have been accepted.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security and its Protocol
by Sweden
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), as modified by the provisions of its Protocol (hereinafter referred to as the "Protocol"), and with a view to supervising the application of these two instruments by the Contracting Parties;

Whereas the Code and the Protocol, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since that date have been binding on Sweden, which ratified them on 25 September 1965;

Whereas, when ratifying the Code and the Protocol, the Government of Sweden stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code, as modified by the Protocol:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit",
- Part VII on "family benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, as modified by the Protocol, the Government of Sweden submitted its 40th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that the law and practice in Sweden continue to give full effect to all the parts of the Code and the Protocol which have been accepted.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Switzerland
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 17 September 1978 has been binding on Switzerland, which ratified it on 16 September 1977;

Whereas, when ratifying the Code, the Government of Switzerland stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VII on "family benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Switzerland submitted its 29th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Finds that law and practice in Switzerland continue to give full effect to all the parts of the Code which have been accepted.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by Turkey
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 8 March 1981 has been binding on Turkey, which ratified it on 7 March 1980;

Whereas, when ratifying the Code, the Government of Turkey stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part V on "old-age benefit",
- Part VI on "employment injury benefit",
- Part VIII on "maternity benefit",
- Part IX on "invalidity benefit",
- Part X on "survivors' benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of Turkey submitted its 26th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part II (Medical care). Article 10.2, of the Code, that the report states that, in case of outpatient treatment, a worker insured under Laws Nos. 506 and 2925 has to pay 20% of the cost of the prescribed medicines in respect of him or herself and 10% in respect of his or her dependants, as well as 20% of the cost of medical tools and prosthetic appliances, subject to a ceiling which may not exceed the current minimum wage (531 new Turkish lira (TRY) in 2006). Comparable cost-sharing requirements in respect of civil servants insured under Law No. 5434 are much less demanding: the beneficiary pays only 10% of the cost of prosthetic appliances, medical tools and medicines, subject to a ceiling which may not exceed the minimum pension paid by the pension fund covering civil servants (TRY591.47 in 2006). Moreover, the fund pays the full cost of medicines in case of outpatient or home treatment of persons requiring long-term treatment for illnesses determined by the Ministry of Health (tuberculosis, cancer, chronic kidney disease, settled insanity, transplantation, etc.);

II. concerning Part III (Sickness benefit). Article 16.1 of the Code (in conjunction with Article 68) that the report states that daily cash benefit in case of sickness is paid at the rate of one half for inpatients undergoing treatment in medical establishments and of two thirds for outpatients;

III. concerning Part VIII (Maternity benefit). Article 52, that the daily temporary incapacity allowance is paid for the total period of eight weeks before and after confinement;

IV. concerning the reform of the social security system, that the process of reforming the Turkish social security system continues to gain momentum accelerated by the introduction of new forms of organisation and management, based on modern information and communication technologies. In such periods of rapid and profound reforms, it is important to ensure that the pace and magnitude of change do not exceed the capacity of the insured population to adapt to them. Special attention should be given to the situation of those categories of persons protected who, by being illiterate, weak, poor or living in remote areas, may experience particular difficulties in abiding by the new rules and communication procedures. The government's general responsibility for the proper administration of the social security institutions and services under Article 71.2 of the Code implies that equal access to protection should be guaranteed for all, but that the services themselves should be people-centred, client-oriented and easily accessible. By associating the representatives of the persons protected as well as the representatives of the employers with the management of these institutions and services, Article 71.1 of the Code establishes an extra guarantee against the possible emergence of administrative and technological barriers preventing easy access to benefits. Being the cornerstones of good governance of social security institutions, these principles gain in importance when the institutions concerned undergo radical reorganisation and restructuring,

Finds that law and practice in Turkey continue to give full effect to all the parts of the Code which have been accepted, subject to receiving detailed replies to questions raised in its previous resolutions and repeated in the present resolution;

Decides to invite the Government of Turkey:

I. concerning Part II (Medical care). Article 10.2 of the Code, to show that the rules and levels of cost-sharing established for the salaried workers are designed to avoid hardship, as well as to indicate whether similar provisions of reducing the burden of cost-sharing applicable to civil servants exist also for salaried workers;

II. concerning Part III (Sickness benefit). Article 16.1 of the Code (in conjunction with Article 68), to explain the reason for reducing the rates of sickness benefit for inpatients undergoing treatment in medical establishments and of two-thirds for outpatients, taking into account that Article 68.b of the Code authorises reduction of benefit to the extent prescribed only as long as the person concerned is maintained at public expense or at the expense of a social security institution or service;

III. concerning Part VIII (Maternity benefit). Article 52, to explain how effect is given to this article, which provides for a minimum duration of the benefit payment of twelve weeks;

IV. concerning the reform of the social security system, to highlight the application of the principles of good governance (Article 71.1 and 2) in the reform process of the Turkish social security system.

Draft Resolution ResCSS(2008)...
on the application of the European Code of Social Security
by the United Kingdom
(Period from 1 July 2006 to 30 June 2007)

*(Adopted by the Committee of Ministers on ... 2008
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,

In the exercise of the functions conferred upon it by Article 75 of the European Code of Social Security (hereinafter referred to as the "Code"), and with a view to supervising the application of this instrument by the Contracting Parties;

Whereas the Code, opened for signature on 16 April 1964, entered into force on 17 March 1968 and since 13 January 1969 has been binding on the United Kingdom, which ratified it on 12 January 1968;

Whereas, when ratifying the Code, the Government of the United Kingdom stated that it accepted, in addition to the parts which must be applied by every Contracting Party (Parts I, XI, XII, XIII and XIV), the following parts of the Code:

- Part II on "medical care",
- Part III on "sickness benefit",
- Part IV on "unemployment benefit",
- Part V on "old-age benefit";

Whereas the Government of the United Kingdom has subsequently, on 19 July 1982, accepted Part VII on "family benefit";

Whereas, in pursuance of paragraph 1 of Article 74 of the Code, the Government of the United Kingdom submitted its 39th annual report on the application of the Code, for the period from 1 July 2006 to 30 June 2007;

Whereas, in accordance with paragraph 4 of Article 74, that report was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, at its 78th meeting in November and December 2007,

Notes:

I. concerning Part III (Sickness benefit) of the Code:

a. Article 16.1, in relation to Article 66 (level of the benefit), that the 38th detailed report of the government stated that incapacity benefit (IB) is the main state sickness benefit in the United Kingdom for persons unable to work because of either short-term or long-term sickness. Employed workers are paid statutory sick pay (SSP) by their employers for the first 28 weeks of incapacity. Once entitlement to SSP has been exhausted, employees can transfer on to IB. Employees who do not qualify for SSP can claim IB instead from the onset of incapacity. Comparing the calculations of the replacement level of the weekly rates of the short-term IB and of the SSP made in the last two detailed reports of the government (33rd in 2001 and 38th in 2006), the Committee of Ministers notes that, in addition to the child benefit for two children and the adult dependency increase which were taken into account in the 33rd report, the calculations made in the 38th report include the child tax credit (CTC) (£78.69 for both children). With the addition of the CTC, the replacement rate of the short-term IB and of the SSP attains respectively 51% and 53.7% of the reference wage, which is above the minimum level of 45% prescribed by the Code. If, however, the calculations were made without the CTC, the replacement rate of both the short-term IB (39.15%) and the SSP (42.55%) would not attain the minimum level prescribed by the Code. The Committee of Ministers notes that the amount of the CTC is composed of different elements and depends on the gross annual family income of the beneficiary;

b. the 39th report indicated that on 3 May 2007, the Welfare Reform Act was given royal assent, bringing into law a number of reforms designed to enable people to come off benefit and move into work. The principal reform measure replaces IB with a new benefit, to be introduced from 2008, called the employment and support allowance (ESA). New beneficiaries will go onto an assessment phase rate of the ESA for thirteen weeks while their medical condition is assessed. The majority of beneficiaries, those who should be able to make steps to return to work, will receive a work-related activity component on top of the basic rate after the first 13 weeks. This component can be subject to sanctions if the claimant does not engage in the conditionality requirements without good reason. Those with the most severe health conditions will receive the support component, which will be payable at a higher rate and free of any requirement to engage in work-related activities. An individual's eligibility for incapacity benefits is assessed through the reviewed personal capability assessment (PCA) process which identifies people who are capable of taking part in work-related activity and the support required to help them get back to work, as well as those who are so limited by their illness or disability that it would be unreasonable to require them to undertake any form of work-related activity in the foreseeable future. The PCA refocuses physical function descriptors and scores to better reflect the activities and functional capability that a reasonable employer would expect of his or her workforce and adds a new element to the assessment, that of work adapted to the state of health, focusing on the health-related barriers to work facing the beneficiaries and the health interventions and workplace adaptations that might help that person return to work. The revised assessment will begin being used in 2008 alongside the new employment and support allowance. To further encourage a move into paid employment among people claiming incapacity benefits, a new "Pathways to Work" package was introduced, with national roll-out scheduled for completion in 2008. This package includes a series of mandatory work-focused interviews, programmes designed to boost claimants' prospects of being able to work, and increased financial incentives for individuals to enter paid employment. The return to work credit (RTWC) is one of the main innovative components of the package: it is an earnings supplement available to incapacity benefit recipients who move into paid work. Payable at £40 per week for a maximum of 52 weeks, it is available to those who have been receiving benefits for at least 13 weeks, have found a job of not less than 16 hours per week, and do not receive earnings in excess of £15 000 per annum;

II. concerning Part IV (Unemployment benefit), that in reply to its previous resolutions concerned with the low rate of the contribution-based jobseekers' allowance (JSA), the government responds that social security benefits in the United Kingdom are paid at a flat rate, in that they are not indexed to the claimant's previous income. The benefits are increased annually in line with prices. This means that the purchasing power of the benefit remains the same year-on-year. Earnings, on the other hand, in a healthy economy tend to increase by more than the rate of inflation. People in work therefore see their standard of living improve year-on-year. Thus, over a period of time there is a tendency to see benefit rates fall behind average earnings but this does not mean that the benefit claimant is getting poorer; simply that their standard of living is remaining constant. The government believes that benefit rates are pitched at the right level – enough to cover essential needs without encouraging benefit dependency. For those whose needs are greater, the United Kingdom has a wide range of means-tested social assistance benefits that guarantee that no person should live in poverty.

While taking due note of the government's statement, the Committee of Ministers would like to recall that the European Code of Social Security obliges the Contracting Parties to maintain social security benefits that are paid at a flat rate, as in the United Kingdom, at the level at least equal to the minimum level laid down in its Article 66. Notwithstanding this obligation, since the introduction of the contribution-based JSA in 1998, its rate has never attained the minimum prescribed by the Code. The 38th report of the government also shows that the contribution-based JSA for a standard beneficiary (man with wife and two children) increased by the amount of the CB and the CTC represents only 41% of the wage of an ordinary adult male labourer (£290 per week) and thus falls short of the minimum level of 45% required by the Code. Recalculated without the CTC, the amount of the contribution-based JSA only represented 27.13% in 2006, down from the 40.04% it attained in 2001 according to the statistics supplied in the government's 33rd report. In absolute figures, the contribution-based JSA has increased over the five-year period covered by the detailed report (2001-06) from £53.05 to £57.45 or by 8.3%, while the Retail Price Index has grown by 12.8% and the index of earnings by 16.13%. The Committee of Ministers is concerned

by the fact that the rate of the contribution-based JSA, which the government considers to be pitched at the right level, is kept consistently lower than the minimum standard established by ILO Convention No. 102 as far back as 1952 and does not even catch up with inflation and cost of living in the country. The Committee of Ministers finds that the traditional logic and principles of social insurance are being reversed when persons entitled to contribution-based benefits receive benefits so low that they would be better off on social assistance;

III. concerning Part V (Old-age benefit):

a. Article 28.a (level of benefit), that according to the 38th report (2006), the weekly rate of retirement pension for a man with thirty qualifying years would constitute 69% of a full weekly pension (payable after forty-four years' contribution) and would thus amount to £58.13 plus £34.85 in respect of a wife of pensionable age. The resulting amount of £92.98 would represent 32.06% of the reference wage (£290 per week). The Committee of Ministers observes that this rate of retirement pension is far below the minimum level of 40% prescribed by the Code;

b. Reform of the state pension system, that the 39th report refers to the Pensions Act 2007, which puts into law the reforms to the state pension system to take effect from 2010 and creates a new scheme of personal accounts with automatic enrolment, which will provide from 2012 a simple way for people to save more and to take personal responsibility for the income they want in retirement. In a band of earnings of between around £5 000 a year and £33 000 a year, employees will contribute 4% to the new scheme, employers, 3%, and a further 1% will be contributed in the form of normal tax relief. Up to 10 million people could be saving in a personal account and, by retirement, their pension funds could be worth up to 25% more because of lower charges. Reforms of the state pension system reduce the number of qualifying years needed to receive a full basic state pension (BSP) from thirty-nine for women and forty for men to thirty years for both. The state pension age will be gradually raised in line with gains in average life expectancy. The state pension age for women is due to rise from 60 to 65 between 2010 and 2020, to come to par with men's state pension age. There will be a subsequent rise, between 2024 and 2046, to 68 for both men and women to reflect increasing longevity in society and secure the financial stability and sustainability of the state pension system in the long term. Annual cost-of-living increases in BSP will be linked with earnings rather than prices. By 2050, the BSP could be worth twice as much as if it had been linked to prices. The state pension will better reflect the different ways in which people contribute to society and will become fairer to those with caring responsibilities, who tend to be women. This will be achieved by abolishing the initial contribution conditions to the BSP, so that caring for children or the severely disabled will build their entitlement, without having to make a minimum level of contributions, as well as by introducing a new weekly credit for those caring for children and a new contributory credit for those caring for severely disabled people for twenty hours or more per week. Anyone who has been in employment or caring throughout their working life could receive £135 a week at retirement in state pensions – which is £20 a week above the guaranteed income level. In 2010, 70% of women reaching state pension age will be entitled to a full BSP, compared to 30% now. By 2025, over 90% of women and men reaching state pension age will be entitled to the full BSP – compared to about 80% without reform. The Committee of Ministers observes that the above reform measures are taken with a long-term perspective in mind and will be implemented from 2010 on,

Finds that law and practice in the United Kingdom continue to give full effect to the provisions of Parts II and VII of the Code and that they also ensure the application of Parts III, IV and V, subject to receiving statistical information showing that the minimum level of the benefits is attained;

Decides to invite the Government of the United Kingdom:

I. concerning Part III (Sickness benefit) of the Code. Article 16.1, in relation to Article 66 (level of the benefit):

a. to show in its next report how the weekly rate of the CTC is calculated for the standard beneficiary with gross annual family income equal to or higher than the gross annual wage of an ordinary adult male labourer determined under Article 66 of the Code;

b. In view of the large number of innovative features of the new legislation, most of which will take effect in 2008, to indicate in its next report how these measures will affect the application of each of the articles of Part III of the Code. The Committee of Ministers also asks the government to provide the calculation of the level of the new employment and support allowance;

II. concerning Part V (Old-age benefit):

a. Article 28.a (Level of benefit), to include in its next report an updated calculation of the rate of the old-age benefit for a standard beneficiary – man with wife of pensionable age without children who do not receive any child or family benefit;

b. the reform of the state pension system, to continue to provide information on the new developments in the pension reform, indicating in particular in respect of the standard beneficiary the part of the replacement income in retirement which, in the forecast timeframe, will be provided by the BSP and the second state pension, and the part which is expected to be supplied from the savings in the personal account.