



Strasbourg, 18 November 2010

CS-SS(2010)13

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

5<sup>th</sup> meeting  
(Strasbourg, 1-3 June 2010)

**MEETING REPORT**

## **I. OPENING OF THE MEETING**

1. Ms Eva Pedersen, Chair of the Committee of Experts on Social Security (CS-SS), opened the Committee's fifth meeting with a few words of welcome. A list of participants is set out in Appendix I.

## **II. ADOPTION OF THE AGENDA**

2. The Committee adopted the agenda as set out in Appendix II.

## **III. INFORMATION FROM THE SECRETARIAT**

4. Mr Karl-Friedrich Bopp, Head of the Social Cohesion Policy and Standards Division, also welcomed the participants. He apologised for the inconvenience caused through the cancellation of the meeting, initially planned to take place from 20 – 22 April 2010 due to volcanic ashes.

5. Mr Bopp informed the Committee about the following points:

- The Committee of Ministers had extended the terms of reference of the CS-SS until 31 December 2012;
- The Netherlands ratified the Revised European Code of Social Security (ETS 139) on 22 December 2009;
- The Slovak Republic signed the European Code of Social Security on 24 February 2010.
- At its 23<sup>rd</sup> meeting, the European Committee for Social Committee (CDCS) finalised a revision of the “Council of Europe Social Cohesion Strategy” and the “Council of Europe Action Plan for Social Cohesion”.
- At the same meeting, the CDCS approved the “Guidelines on improving the situation of low-income workers and on the empowerment of people experiencing extreme poverty”.

## **IV. SUPERVISION OF THE APPLICATION OF THE EUROPEAN CODE OF SOCIAL SECURITY (Art. 74)**

### ***General observations***

Mr Alexander Egorov, Department of International Labour Standards at the ILO (International Labour Office), presented the general observations and conclusions of the Committee of Experts on the Application of ILO Conventions and Recommendations (document CS-SS(2010)6). The ILO committee of experts had examined 20 annual reports covering the period from 1 July 2008 to 30 June 2009.

The ILO Committee of experts was pleased to note that out of the 20 Conclusions on the country reports, in 14 cases it had found that national law and practice continue to give full effect to the Parts of the Code and the Protocol which have been accepted. This was the highest level of compliance with these instruments attained by the Contracting Parties during the last two decades.

The information contained in the annual reports has permitted the ILO Committee to establish *cases of progress* in the application of the Code, where, following its previous conclusions, the

ILO Committee had been able to express its satisfaction at certain legislative and practical measures taken by the governments concerned to give full effect to the provisions of the Code in question. In addition to 12 cases of progress noted by the Committee since 2000 in respect of Germany, Cyprus, Spain, France (two cases), Ireland (two cases), Luxembourg, Norway, Portugal (two cases) and Turkey, it now wished to draw special attention to one new case of progress and two cases where the governments concerned had committed themselves to take measures suggested by the ILO Committee.

With regard to **Estonia**, the ILO Committee noted with **satisfaction** that, following the amendment of section 5(4)(1) of the Health Insurance Act, which entitled women to free medical care starting only from the 12th week of pregnancy, from 1 July 2009 all pregnant women in Estonia, including those who did not have previous health insurance on any other basis, have the right to free pre-natal medical care from the moment of medical confirmation of pregnancy, in accordance with Article 52 of the Code.

With regard to **Belgium**, the ILO Committee invoked the possibility of issuing a circular to the directors of unemployment offices, drawing their attention to the European rules applicable to the regime of sanctions in unemployment insurance as envisaged in Article 68 of the Code. The Government indicated in its report that it will do what is necessary for a request in this respect to be made to the National Employment Office, which was administered jointly by the social partners.

With regard to the **Netherlands**, the Government stated that it will, in line with the ILO Committee's request, draw the attention of the Institute for Employee Benefit Schemes (UWV) to the obligation of the Netherlands under Article 68(f) of the Code to apply sanctions only where neglect or recklessness amounted to wilful misconduct directly causing unemployment of the person concerned.

After discussion, the CS-SS decided to cross out the last paragraph of the ILO Conclusions on the application of the Code concerning health services and sickness insurance schemes and the influenza A(H1N1). This paragraph will not appear in the draft resolutions to be addressed to the Committee of Ministers of the Council of Europe.

Therefore, countries should not include the information on this issue in this year's report due for the 31<sup>st</sup> of July 2010. As agreed also during the meeting, an email confirming the above had been sent to the persons having received the request for the annual report.

### ***Information submitted by Contracting Parties***

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

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 in complying with the Code's provisions, in the light of comments made by the Committee of Ministers in previous Resolutions.

#### **Germany**

The ILO Committee found that national law and practice continued to give full effect to all Parts of the Code and the Protocol.

The German delegate thanked the ILO Committee and said that he was pleased his country fulfilled the Code's provisions.

### Belgium

The ILO Committee found that national law and practice of Belgium continued to give full effect to the Code and its Protocol.

In its previous conclusion, the ILO Committee referred to the possibility of issuing a circular addressed to the directors of unemployment offices, drawing their attention to the European rules applicable to the regime of sanctions in unemployment insurance as envisaged in Article 68(d) and (f) of the Code. The Government indicated in its report that it would do what is necessary for a request in this respect to be made to the competent institution, and particularly to the National Employment Office, which is subject to joint management. While noting that it is for the social partners to indicate their views on this possibility, the ILO Committee hoped that the Government would not fail to follow developments in this respect closely in view of its general responsibility for the proper administration of the institutions responsible for the application of the Code.

The Belgian delegate said that a circular had been issued to the directors of unemployment offices, drawing their attention to the European rules applicable to the regime of sanctions in unemployment insurance as envisaged in Article 68 of the Code.

### Cyprus

The Cypriot delegate had been unable to attend the meeting.

### Denmark

The ILO representative noted that the ILO Committee had raised a number of technical questions related to Part III (Sickness benefit), Part IV (Unemployment benefit) and Part VII (Family benefit) of the Code. He suggested that the Danish Government would reply to these technical questions in its next report.

The Danish delegate thanked the ILO Committee and said that the information requested would be supplied in the next report.

### Spain

The Spanish delegate thanked the ILO Committee and said that he was pleased his country fulfilled the Code's provisions.

### Estonia

The ILO representative recalled that Estonia had ratified the Code only recently. Consequently, the ILO Committee and the Estonian Government were in intense dialogue in order to sort out a number of issues. The most pertinent were the following:

Part III (Sickness benefit)

According to current Estonian legislation, an insured person shall not receive benefits for temporary incapacity for work if a doctor established that the illness or injury was caused by intoxication by alcohol, drugs or toxic substances. In its previous conclusions, the Committee had pointed out that withdrawal of the benefit in such cases would be allowed under Article 68(f) of the Code only when intoxication resulted from the *wilful* misconduct of the person concerned. The ILO Committee would like the Government, in order to give better effect to Article 68(f) of the Code, to instruct the Health Insurance Fund to carry out such an investigation and to apply the sanction proportionately to the established gravity of misconduct. Statistics were to be provided on the total number of cases examined under section 60(1)(a) of the Health Insurance Act each year since 2005 in comparison with the number of cases in which the benefit was refused.

#### Part IV (Unemployment benefit)

According to current Estonian legislation, the right to unemployment benefit was withheld in the case where employment was terminated due to a breach of duties of employment or service, loss of confidence, an indecent act or an act of corruption. With regard to the disciplinary offences committed by the persons protected, Article 68(f) of the Code allowed suspension of unemployment benefit only when dismissal resulted from the wilful misconduct of the person concerned, and thus did not allow suspending the benefit when the dismissal was motivated by the employee's acts which, though blameable, could not be qualified as wilful.

The ILO Committee observed that the principles established by Article 68 of the Code had not yet been fully incorporated into the Estonian legislation regulating unemployment insurance as well as health insurance, both of which apparently sanction the employee's misconduct and even loss of confidence not caused by misconduct by the full withdrawal of the right to the benefit, irrespective of whether the employee acted wilfully or not. The ILO Committee would expect the Government to give more thought to bringing the regime of sanctions in social security law in line with the approach advocated by the Code and followed in other ratifying countries.

In addition there were a number of technical issues raised related to Part V (Old-age benefit), Part VII (Family benefit), Part VIII (Maternity benefit) and Part X (Survivors' benefit).

The Estonian delegate noted the comments made to which the Estonian Government would respond in its next report.

#### France

The ILO representative said that the ILO Committee was in a dialogue with the French Government regarding social security governance and financing. At the same time, the comments made should be seen as if they were addressed to all Governments.

The deficit in the social security schemes was worrying. The financial and economic crises worsened matters even further.

In this context, the ILO Committee requested the Government to continue to report on observance of the objectives and time-bound commitments which it has determined for:

- (1) re-establishing the financial equilibrium of the social security system;
- (2) stopping the continued growth of the public debt in relation to social security;

- (3) paying off former debts contracted by the State;
- (4) envisaging sufficient budgetary allocations to cover the State's future commitments to social security, particularly in relation to the compensation of exemptions or benefits provided on behalf of the State; and
- (5) introducing governance rules to clarify the financial relations between the social security system and the State and preventing debts from being renewed in future.

The ILO Committee noted in this connection that the French Government's priority was still to rehabilitate the financial position of social security and to return to equilibrium, but in a much more difficult economic context. The report nonetheless indicated that two rules of governance allow the financial relations between the State and the social security system to be clarified.

At the same time, the ILO Committee noted the increase in the number of measures providing relief from social security charges in order to subsidize enterprises at a time of economic crisis at the expense of social security.

The ILO Committee would be grateful if the Government would give the reasons why the French State, notwithstanding the range of available tax and other measures to encourage economic activity in the country, continued to opt more for arrangements to relieve companies of social charges, which could contribute to the growing deficit of the general social security scheme. In order to assess the effectiveness of the new governance rules referred to by the Government, the ILO Committee also asked it to include in its next report information on the implementation of these provisions in practice, specifying the amounts actually recovered by social security and giving specific examples during the reference period of instances where: (1) the State actually provided full financial compensation for social security schemes subject to the social contribution exemption arrangements for policies aimed at employment, land development or the development of certain economic sectors; (2) an existing measure for reduction, exemption or lowering of the contributions base has actually been abolished before implementation of a new measure of an equivalent amount; and (3) social contributions have actually been levied on the total amount of a golden parachute granted to an executive upon departure.

The French delegate thanked the ILO Committee and said that the information requested would be supplied in the next report. She added that over the last 10 years it had indeed become practice that the State paid for the social security charges of which the enterprises were exempted.

### Greece

Regarding *Part VI (Employment injury benefit) of the Code, Article 36, paragraph 2*, the ILO representative recalled that in June 2008 technical consultations between the General Secretariat of Social Security, IKA-ETAM and the experts of the Council of Europe and the ILO had taken place. As a consequence, the Government had decided to introduce appropriate legislative changes in order to give effect to Article 36(2) of the Code by re-establishing a benefit for victims of employment injury with incapacity of less than 50 per cent. In its 27th report, the Government stated that the changes will be made after the forthcoming findings of a newly created Committee for the Comprehensive Reform of Invalidity Institutions in Greece. The ILO Committee hoped that the Government would be able to indicate progress in its next report.

The Greek delegate recalled the very difficult situation of its country regarding public finances. Due to measures requested by IMF and European Union, the benefits may be even further reduced. Further explanations will be given in the next report.

### Ireland

The ILO representative said that Ireland gave full effect to the Code's provisions.

The Irish delegate said that he was pleased with the ILO conclusions.

### Italy

The ILO representative said Italy gave full effect to all the Parts of the Code that had been accepted (Part V (Old-age benefit), Part VI (Employment injury benefit), Part VII (Family benefit) and Part VIII (Maternity benefit)).

The ILO Committee was pleased with the information provided on Part II (Medical care), even though this Part of the Code had not been accepted by Italy.

The ILO Committee noted with interest a new method of payment (vouchers) for contributions and salaries. It has been applied in the farm sector for activities performed by students and pensioners. The aim of this method was to regulate atypical work characterised by temporary collaborations that would otherwise not be covered by any social insurance.

The ILO Committee was impressed by the Italian organisation of social security supported by information technology. However, the question of data and computer safety would come up. In this context, the Italian experience could be useful for the rest of Europe.

The Italian delegate said that each citizen would have access to his/her information registered by the computer system. The citizens would regularly be informed of their data. He was confident of the computer and data safety applied. As for all the other comments made by the ILO Committee, Italy would give the necessary information in its next report.

### Luxembourg

The ILO representative thanked Luxembourg for an informative report. It contained information on new legislation regarding the elderly and in particular for those who were terminally ill. New legislation established the social right to palliative care. The law also introduced euthanasia (assisted suicide), which in turn raised the question, whether costs related to bringing end to life intentionally should be covered by social security.

Palliative care is covered both by health insurance and dependency insurance in accordance with the rules of each branch. As for euthanasia, neither the health insurance nor the dependency insurance cover this act under the current legislation.

### Norway

The ILO representative said that in its previous conclusions, the Norwegian Government had been invited to consider whether or not the guidelines of the Directorate of Labour and Welfare need to be changed in order to ensure that unemployed persons are not sanctioned for refusing to accept job offers incompatible with their acquired professional and social status at least during

the initial period of three months (13 weeks) provided for in Article 24 of the Code. The Norwegian Government gave the necessary explanation. The ILO Committee thanked the Government for a thorough examination of the situation and would like it to include the same detailed statistical data on the cases of sanctions in its next detailed report on the Code.

The Norwegian delegate agreed to supply the same detailed statistical data on the cases of sanctions in its next report on the Code.

### Netherlands

The ILO representative said that the comments related to sub-item (b) of the Part IV (Unemployment benefit) and the ones related to Part V (old-age benefit) were questions for clarification and could be deleted from the final version of the respective Council of Europe Resolution.

As for Part IX (Invalidity benefit), the ILO Committee had drawn attention to the following main areas of legal and conceptual incompatibilities between the Code and the Dutch invalidity benefit as reformed by the Work and Income (Employment Capacity) Act of 10 November 2005 (WIA).

Article 54 of the Code, as amended by the Protocol, stipulated that a person should be recognized as fully incapacitated if he or she was unable to engage in any gainful occupation to an extent of 66.6 per cent. The threshold of 80 per cent incapacity established by the WIA for defining a fully incapacitated person was set much higher than the level of 66.6 per cent (two-thirds) fixed by the Protocol. In order to comply with the Protocol, the Government was advised to include persons with 65–80 per cent disability under the definition of fully and permanently incapacitated.

Part IX of the Code does not require a fully incapacitated person (66.6–100 per cent disabled) to work and use his or her remaining earning capacity. Under the terms of the WIA, a person with 65–80 per cent disability who keeps a remaining working capacity of up to 35 per cent, is, for that part, considered to be unemployed and put under the obligation, in order to be entitled to an invalidity benefit, to register as a jobseeker and to make sufficient attempts to obtain suitable work and to accept an offer of such work (section 4.1.4, subsection 1, of the WIA). The ILO Committee had concluded that these eligibility requirements were those of the unemployment benefit and not of the invalidity benefit, and thus put the Return to Work Scheme for the Partially Disabled (WGA) outside the scope of Part IX of the Code.

In addition to the obligation to seek work, the WGA recipients were also obliged to prevent the occurrence of incapacity, to limit the existence of such incapacity, to acquire the potential to perform suitable work and to make sufficient reintegration efforts (sections 4.1.2 and 4.1.3 of the WIA). Non-fulfilment of these obligations was sanctioned by the benefit being refused wholly or partially, permanently or temporarily, or by applying fines (Chapter 10 of the WIA). The Committee concluded that the regime of obligations and sanctions imposed by the WIA on the recipients of the WGA benefit in the disability category of 65–80 per cent was not compatible with article 68 of the Code and was construed in such a way as to effectively deprive an insured person of the benefit in case of non compliance.

In reply, the Dutch delegate stated that the Netherlands saw no reason to change the definition of fully and permanently incapacitated and that changing the definition to 66.6 per cent would just undermine the activating character of the Income Provision Scheme for Fully Occupationally Disabled (IVA). Central to the WIA was the emphasis on what persons with disability could do



rather than on what they could not. It was also important for the society as a whole, which does after all benefit from the greatest possible work utilization of people who can work. Through financial incentives employers and employees were encouraged to do everything to ensure that those who were still partially capable to work can find or retain work. The regime of legal obligations and sanctions of the WIA was the logical consequence of this change in thinking about disability in the Netherlands, but there are no indications that the implementing body put pressure to the disabled persons to accept work. The WIA has now been in force for over three years and has been very successful in terms of reducing the number of applications for disability benefits, helping to decrease the size of the pool of disabled in the country by almost 200,000 people by the end of 2008 compared to 2002, which has dropped to its lowest level since 1983. The Government referred in this respect to the OECD which praised the Netherlands for implementing the most fundamental changes to the sickness and employment disability regulations, attributing their success to the “shift of responsibilities to employers and employees, a tightening in benefit eligibility and generosity, and a (partial) privatization of hitherto public schemes”.

The Dutch delegate then explained in detail the notion of “remaining earning capacity” of the disabled. The ultimate goal of the system wanted disabled to be re-integrated into the labour market to the greatest extent possible. The system was not at all meant to force disabled to work.

The Dutch delegate concluded that with these explanations the Dutch Government complied with the requirements of the Code.

The ILO representative invited the Dutch Government to include all these arguments in its next report. The Government would have to prove that its measures were not against the principle of access to basic social rights for the disabled.

The Dutch delegate underlined that the focus of the Dutch policy for disabled was to look after their remaining capacities first. He agreed to give all the explanations requested in its next report.

The Chair said that similar schemes were being applied or being explored in other countries. Therefore the discussion held with the Dutch delegation would be of general interest and might even be subject for a new study. The Committee agreed.

### Portugal

The ILO representative said that the change in the Portuguese legislation from maternal benefits to parental benefits was a modern development which should be incorporated in the Code as a new benefit. He also referred to a relevant European Union Directive recently adopted.

The representative of Portugal confirmed that the amended Labour Code has introduced the protection of parental rights as a way of promoting equality between men and women. Protection of parental rights includes the protection of maternity, so the latter no longer exists independently.

### United Kingdom

The ILO representative said that the developments in the United Kingdom with regard to social security reforms were quite innovative. In fact, the United Kingdom merged sickness,

unemployment and invalidity benefits into one branch. The result was a move towards integrated social security branches, which in fact departed from the relative rigid structure of the Code.

In its next report, the United Kingdom should give careful consideration as to whether these reforms still respected its international obligations under the Code.

The UK delegate said that the questions raised will be answered in its next report. He recalled that a new Government had recently taken office. More reforms in the welfare and pension field were to be expected. The UK delegate assured the CS-SS that all these reforms had only been undertaken after careful consideration of the international commitments of the UK government.

### Slovenia

The ILO representative said that the ILO Committee found that law and practice in Slovenia gave full effect to the Parts of the Code which have been accepted.

### Sweden

The ILO representative said that Sweden complied fully with the Parts of the Code and the Protocol which it had accepted, except Part IV, where the waiting period for unemployment benefit exceeded the limit fixed by the Protocol. In fact the waiting period had been increased from five to seven days with the aim to avoid unemployment insurance being used by those who are unemployed for a very limited period in connection with changing jobs.

The Swedish delegate said that its government will examine the issue of the extension of the waiting period and will report back to the ILO Committee in its next report.

### Switzerland

The Swiss delegate was not present when the item was discussed.

### Czech Republic

The ILO representative said that the Czech Republic was an example of good governance of the social security system. In fact, the Government of the Czech Republic brought public and social security finances in order well before the current social and economic crisis. As for the technical question put on Part VII (Family benefit), an explanation could be given in the next report.

### Turkey

The ILO delegate said that a number of questions coming up yearly since 2006 still waited for a satisfactory reply. In fact, the Turkish government reformed in 2006 completely its social security system by putting in place a new organisation and by introducing new technical means like computer/internet technology.

The ILO delegate wondered whether the new IT technology applied took account of the old, poor and illiterate, which required maybe some special care.

The Turkish delegate said that the reform process of the social security system starting in 2006 was not finalised yet. Computer/internet illiterate persons were being given special attention. A more detailed explanation will be given in the next report

In accordance with its terms of reference, the CS-SS adopted its conclusions concerning the application of the Code and the 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 for the period from 1 July 2008 to 30 June 2009, as set out in Appendix III.

These draft Resolutions on the application of the Code and its Protocol will be presented to the Rapporteur Group on Social and Health questions (GR-SOC) at its meeting of 21 September 2010 and then to the Committee of Ministers (if possible at its 1093<sup>rd</sup> meeting of 22 September 2010) for its adoption.

## **V. CONTRIBUTION OF THE CS-SS TO THE IMPLEMENTATION OF THE ACTION PLAN ON SOCIAL COHESION**

The Secretariat (Ms Annachiara Cerri) gave a presentation of the draft Action Plan on Social Cohesion.

The idea was to give life to the concept of social cohesion and to make it operational on the basis of the four pillars defined by the High Level Task Force, in conformity with the new version of the Social Cohesion Strategy. The Action Plan should be seen as a methodological tool, which could be adapted to different European contexts and implemented with citizens. The policy work of the Council of Europe could in this way be brought to the local level, closer to citizens and have increased visibility. Combining a top-down approach with a bottom-up one was a new element. The interaction of these approaches was already experimented by the Council of Europe in order to see its real political and operational interest. Public authorities, at all levels, can develop and set up - together with citizens - their own action plans for Social Cohesion, without great expenses. The Action Plan would provide the opportunity to develop shared social responsibility in member states. A coordination group would be set up to lead the process in territories interested in the implementation of the Action Plan and should have the widest possible transversal composition, including representatives of the most vulnerable groups. Positive outcomes can be expected from the complementarity between the Action Plan and EU national plans for social inclusion.

The CS-SS thanked Ms Cerri for the presentation. It concluded that the Committee's current activities contribute to implementing the action plan on social cohesion: the cooperation activities in view of the signature and ratification of the Code as well as the planned activity on the sustainability of the social security systems were mentioned.

## **VI. EUROPEAN SOCIAL CHARTER: RESULTS OF THE LAST CONTROL CYCLE ON ARTICLES 12 (SOCIAL SECURITY), 13 (SOCIAL AND MEDICAL ASSISTANCE) AND 14 (SOCIAL WELFARE SERVICES)**

Mr Hendrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights, made a presentation on the results of the last control cycle on Articles 12 (Social Security), 13 (Social and Medical Assistance) and 14 (Social Welfare services) of the European Social Charter.

Mr Kristensen thanked the Chair and the Committee for the opportunity to talk about the Charter. There were indeed close links between this Committee and the European Social Charter

mechanism. He referred in particular to Article 12.2 of the Charter, which considered as a minimum a social security system as it was prescribed by the European Code of Social Security.

The co-operation between the two mechanisms could certainly be improved. This process will most probably be facilitated by the on-going reform process which the Council of Europe is undergoing.

At the same time it should be emphasised that there were important differences between the Code of Social Security and the European Social Charter. The Charter was a human rights treaty and not a technical standard setting instrument. Social protection and social security issues were important areas of work for the Charter. However, the Charter also covered economic and cultural rights in its widest sense.

Mr Kristensen recalled that the Charter was ratified by 43 Member States. 30 Member States had ratified the Revised Charter from 1996; for 13 Member States the initial Charter from 1961 was still in force.

Mr Kristensen said that the supervision of state compliance with the European Social Charter was the responsibility of the European Committee of Social Rights. This Committee was independent and had been established by the Charter.

Mr Kristensen explained the Committee was composed of 15 independent experts, nominated by State Parties and elected by the Committee of Ministers. The independent experts were elected for six years, which could be renewed once. The current Chair came from Slovenia.

There existed two procedures. The mandatory reporting procedure and the collective complaint procedure, the latter only if a Member State had ratified this facultative provision. The presentation would focus on the last cycle of the mandatory procedure with regard to Articles 12 (The right to social security), 13 (The right to social and medical assistance) and 14 (The right to benefit from social welfare services).

Mr Kristensen explained that in 2006 the 31 Articles of the Charter were divided up into four thematic groups. Group 1 was on Employment, training and equal opportunities, group 2 on Health, social security and social protection), group 3 on Labour rights and group 4 on Children, families and migrants). In October 2010 reports on group 4 were expected.

The last reporting on Group 2, which included social security and social protection, had been done in October 2008.

Mr Kristensen said that Article 12 belonged to the nine hard core Articles of the Charter, of which Member States had to accept at least six upon ratification.

Mr Kristensen then referred to the 2009 Conclusions in relation to the 4 sub-paragraphs of Article 12.

*Article 12.1 (to establish or maintain a system of social security):*

34 countries examined, 25 conclusions of non-conformity, 8 deferred conclusions and 1 conclusion of conformity.

Grounds for non-conformity: Inadequacy of income-substituting social security benefits; duration of unemployment benefit periods too short.

*Article 12.2 (to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security):*

27 countries examined, 3 conclusions of non-conformity, 6 deferred conclusions and 18 conclusions of conformity.

Grounds for non-conformity: Repeated lack of information

*Article 12.3 (to endeavour to raise progressively the system of social security to a higher level):*

32 countries examined, 4 conclusions of non-conformity, 7 deferred conclusions and 21 conclusions of conformity.

Grounds for non-conformity: Repeated lack of information

*Article 12.4 (social security co-ordination):*

29 countries examined, 20 conclusions of non-conformity, 5 deferred conclusions and 4 conclusions of conformity.

Grounds for non-conformity: equal treatment not guaranteed; retention of accrued benefits not guaranteed; accumulation of insurance or employment periods completed in another State not guaranteed.

Mr Kristensen then turned to the case-law established in 2009 under Article 13 (The right of social and medical assistance), another hard core provision.

*Article 13.1 (Assistance in case of sickness)*

32 countries examined, 23 conclusions of non-conformity, 2 deferred conclusions and 7 conclusions of conformity.

Grounds for non-conformity: manifest inadequacy of social assistance; discrimination against foreigners; absence of an effective right to appeal; assistance not guaranteed for the duration of the state of need; assistance not guaranteed for certain target groups.

*Article 13.2 (Social assistance shall not lead to diminution of political or social rights)*

35 countries examined, 2 conclusions of non-conformity, 3 deferred conclusions and 30 conclusions of conformity.

Grounds for non-conformity: Repeated lack of information.

*Article 13.3 (Provision to receive advice and personal help)*

34 countries examined, 6 conclusions of non-conformity, 8 deferred conclusions and 20 conclusions of conformity.

Grounds for non-conformity: Length of residence conditions imposed on foreigners.

*Article 13.4 (Provision of equal footing of nationals with foreigners)*

25 countries examined, 6 conclusions of non-conformity, 9 deferred conclusions and 10 conclusions of conformity.

Grounds for non-conformity: Emergency assistance not guaranteed to unlawfully present foreigners.

Mr Kristensen then turned to the case-law established in 2009 under Article 14 (The right to benefit from social welfare services).

*Article 14.1 (Promotion and provision of services which contribute to the welfare and development of both individuals and groups in the community)*

34 countries examined, 9 conclusions of non-conformity, 8 deferred conclusions and 17 conclusions of conformity.

Grounds for non-conformity: Absence of a system providing access to social services; excessive length of residence requirements; no monitoring of quality of services.

*Article 14.2 (Encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of social services)*

34 countries examined, 4 conclusions of non-conformity, 6 deferred conclusions and 24 conclusions of conformity.

Grounds for non-conformity: Absence of a system providing access to social services; excessive length of residence requirements; no monitoring of quality of services.

Mr Kristensen ended his presentation by saying that original texts should be consulted under the Charter Web-site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)). He added that he concentrated his presentation on violations of Articles by the Member States. Therefore the conclusion could be made, that the Committee of Social Rights was very demanding. In fact, apart from some paragraphs the overall majority of Member States were in compliance with the provisions. In quite a number of other cases the Committee of Social Rights had taken note of the measures taken by Member States to remedy the situation.

In the ensuing discussion a number of points including the following were raised:

- It was considered an extreme interpretation of the relevant provisions by the Committee of Social Rights that children of migrant workers should with regard to benefits be treated equally even if they did not live in the country of employment of the migrant worker;
- The case law that persons living irregularly in a country should benefit from medical urgency assistance was questioned;

Mr Kristensen replied that the Social Charter was a human rights treaty and that the Committee of Social Rights took the liberty to interpret the provisions of the Charter in the same way as it was practiced by the European Court of Human Rights.

The Chair thanked Mr Kristensen for his excellent presentation and the replies to the questions raised.

## **VII. LATEST DEVELOPMENTS IN ILO SOCIAL SECURITY INSTRUMENTS**

Mr Egorov shared the latest developments with regard to social security instruments at the international level. In this context he also outlined the major theme prepared for discussion at the 2011 ILO Conference, which intended to position access to social security as a human right.

## **VIII. THE EUROPEAN CODE OF SOCIAL SECURITY REVISED: LATEST DEVELOPMENTS**

The Committee was informed that The Netherlands had ratified the Revised European Code of Social Security (ETS 139) on 22 December 2009 as the first member State. This instrument would enter into force once it was ratified by two member states.

Responding to questions, the Netherlands delegate said that his country had ratified all parts of the Revised Code and that the Code still applied for the Netherlands as long as the Revised Code did not enter into force.

## **IX. 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*

Representatives of the member states (e.g. Russian Federation, Lithuania, Romania, Albania) reported on current developments in their respective countries with regard to the signature and/or ratification of the Council of Europe's social security instruments (the Code, the Protocol, the Revised Code, Article 12 of the European Social Charter and the Revised Charter, the European Convention on Social Security and other co-ordination instruments).

### *b. Bilateral and regional co-operation activities*

Where relevant, delegates reported on bilateral and regional co-operation activities implemented in the social security field since the previous CS-SS meeting in March 2009.

### *c. 20<sup>th</sup> training course on social security, Zagreb, 29 September – 1 October 2009 and 21<sup>st</sup> training course on standard-setting instruments in the social security field, Switzerland, Switzerland, 2010.*

The Secretariat provided information about the 20<sup>th</sup> training course on social security, focusing on social security co-ordination, held in Zagreb from 29 September until 1 October 2009 at the invitation of the Croatian authorities.

The next social security training course, to be held in Fribourg, Switzerland, would deal with standard-setting instruments, including a session on bilateral social security agreements.

### *d. Regional Programme on Social Security Co-ordination and Social Security Reforms in South-East Europe (IPA)*

Mr Sixto Molina provided information about the Regional Programme on Social Security Co-ordination and Social Security Reforms in South-East Europe (IPA).

The IPA joint Regional Programme on Social Security Co-ordination and Social Security Reforms in South-East Europe had started in March 2008, and would continue until 30 November 2010. Turkey was involved as a beneficiary party, while Romania, Bulgaria and Moldova were no longer beneficiary parties. Numerous activities were to be organised as part of the programme – including social security co-ordination summer schools, national training courses, awareness-raising meetings, speaking days (meetings between two pension funds to examine individual complaints), compatibility studies, study visits and the drafting of national strategic papers, regional papers and ministerial declarations – with a view to improving the region's social security institutions. More information could be found on the [www.coe.int/sscssr](http://www.coe.int/sscssr) site.

#### **X. THE IMPACT OF THE FINANCIAL CRISIS ON NATIONAL SOCIAL SECURITY SYSTEMS AND THE MEASURES TO REINFORCE THE SOCIAL PROTECTION OF MOST VULNERABLE GROUPS OF POPULATION**

Mr Thomas Debrouwer made a presentation of the draft report which he had elaborated on the basis of national contributions (CS-SS (2010) 8).

Mr Debrouwer said that the impact of the financial crisis on the European labour market could be summarised as follows:

- Unemployment rose in all countries (up to 10 per cent)
- Countries from Eastern Europe observed higher unemployment increases
- Informal employment rose
- Young, temporary and low-skilled workers were particularly affected
- Average duration of job search took longer.

The stimulus packages put in place by countries varied from 0.3 % GDP (Italy) to 3.8 % GDP (Hungary). They included tax cuts, investment in public infrastructure, active and passive employment policies and extension of social security.

The financial crisis had two effects on the social security schemes: revenues became reduced (reduced contributions due to a higher level of unemployment; drop in investment returns of social security funds) and expenditures increased (higher unemployment, higher costs for housing and health care).

Countries varied in measures taken to sustain the social security systems:

- Investment switched towards less risky assets
- Employer contributions were increased (Cyprus, Iceland)
- Creation of reserve funds (Ireland)
- Increase of retirement age (Germany, Italy)

Mr Debrouwer concluded that social protection mechanisms protected people from becoming trapped in poverty, empowered them to seize market opportunities and contributed to aggregate demand. In addition, job-centred measures introduced quickly were more efficient and helped to achieve medium-term fiscal goals.



The Chair thank Mr Debrouwer for the report and the presentation. She invited the Committee to discuss the report itself as well as a possible follow-up to it.

After discussion, the CS-SS decided that the report on the anti-crisis measures presented and discussed during the meeting should be published as soon as possible once the comments made by countries were included. Countries wishing to add any additional change are requested to send it to the Secretariat by the 21<sup>st</sup> of June 2010.

The Committee also decided to work on the social security after the crisis and on the sustainability of the social security systems. This will be done within the framework of the General Survey on Social Security that the ILO is preparing for its International Labour Conference of 2011. The Council of Europe (Social Cohesion Directorate through the work of the CS-SS) could present at this Conference the European Survey focused on "The sustainability of European social security systems in a open global economy". The material gathered already by the ILO will be used as a basis for this report.

The CS-SS agreed with the following schedule:

- The Council of Europe will ensure the organisation of the analysis of the replies given to the ILO questionnaire in order that a draft report on the social security in Europe be presented by beginning of October 2010;
- The draft report will be sent to the members of the CS-SS in order to set up a group in November 2010;
- The group will reflect about the structure of the report and on the particular problems in social security developments and to draft a kind of executive summary;
- The final report should be ready by the end of February 2011 on recommendation of the group;
- The report will be presented at the 6<sup>th</sup> meeting of the CS-SS (29-31 March 2011) and presented at the ILO Labour Conference in June 2011.

## **XI. MAIN CURRENT OR PLANNED REFORMS IN SOCIAL SECURITY**

The Chair referred to document CS-SS (2010) 10, which described the main reforms social security is undergoing in Hungary (attempt to raise the proportion of women in employment) and the Slovak Republic (Active support of families with children; change of eligibility criteria on early old age pension). The Committee took note.

## **XII. BENEFITS IN RESPECT OF CHILDREN**

The Secretariat explained the history of this activity, which led to the report CS-SS (2010)11, which had been commissioned to Ms Yampolska, consultant.

The decision to gather further information at the European level on this issue had been taken at the 4<sup>th</sup> CS-SS meeting. At the last meeting it became clear that the issue of benefits in respect of children was handled differently in the different member States.

The collection of information was considered useful. However, if this report were to become a publication, a number of important corrections and amendments would have to be made. It also became clear that the introduction of a new chapter as part of the European Code of Social Security was unrealistic.

After discussion, the Committee decided to discontinue the issue of the benefits in respect of children given its complexity. Available resources should be devoted to other priority activities.

### **XIII. COORDINATION OF SOCIAL SECURITY**

Mr Felix Schatz, Legal Officer at the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, made a presentation on the new European Union co-ordination rules in the field of social security.

Mr Schatz started by giving a short historic overview of EU legislation in the field of social security co-ordination. In fact, social security was one the “oldest” legislations applied at EU level. Regulations 3 and 4 were adopted back in 1958. They were based on the ILO standards at that time. A second wave of legislation in the social security field was introduced with the adoption of Regulation 1408/71 and its implementing Regulation 574/72 which were in force for nearly 40 years. Regulation 987/2009 just entered into force on 1 May 2010 thus implementing Regulation 883/2004.

Mr Schatz said that within the EU the overall aim of social security had never changed. Citizens were not to lose their social security rights when they moved from one member state to another one.

He recalled the four principles of EU social security co-ordination which were the following:

- Equality of treatment regardless of nationality
- Legislation of only one Member State applied at any one time
- Periods of insurance acquired in different Member States could be aggregated
- Benefits could be exported.

Mr Schatz then turned to the most recent Regulations, namely 883/2004 called the Basic Regulation and 987/2009 called the Implementing Regulation. He said that both Regulations were of equal legal value. They were complementary to each other.

Mr Schatz said that the main guiding principle of the new Regulations was the enhanced co-operation of Member States in the field of social security co-ordination. The new Regulations aimed to facilitate institutional processes whilst at the same time making citizens’ rights more effective.

Mr Schatz said that the two new Regulations should modernise the social security co-ordination by applying the following five key elements:

- Modernisation
- Simplification
- Clarification
- Increased flexibility
- Improved protection of citizens’ rights.

Modernisation elements included new procedures for better management of claims, legal and technical aspects. For example, data could from now on be exchanged electronically between Member States (eessi system).

Simplification elements included the introduction of a lighter procedure for up-dating the

Annexes.

Clairification elements included the incorporation of the findings of the European Court of Justice (ECJ) case-law in a range of areas.

Increased flexibility elements included that an unemployed frontier worker could register at employment services of two Member States.

Elements related to the improved protection of citizens' rights included that no citizen was left without social security coverage or access to benefits.

In conclusion, Mr Schatz referred to a specific publication made to explain the application of the two new Regulations, which could be downloaded from the web-site ([ec.europa.eu/social-security-coordination](http://ec.europa.eu/social-security-coordination)).

The Chair thanked Mr Schatz for this comprehensive overview over the two new Regulations 883/2004 and 987/2009. She hoped that in particular the simplification elements would turn out to be effective.

#### **XIV. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY**

No interventions were made.

#### **XV. ELECTION OF THE CHAIRPERSON AND THE VICE-CHAIRPERSON OF THE CS-SS**

The CS-SS appointed Mr Joseph CAMILLERI, from Malta as Chair and Ms Elena VOKACH-BOLDYREVA from the Russian Federation as Vice-chair.

#### **XVI. OTHER BUSINESS**

Delegates are invited to suggest topics which could be addressed at future meetings of the CS-SS.

#### **XVII. DATE OF THE NEXT MEETING OF THE CS-SS**

The Committee decided to hold its 6<sup>th</sup> meeting from Tuesday 29 to Thursday 31 March 2011.

A second date (5-7 April 2011) has been set in case the European Parliament holds its plenary session in Strasbourg during the first proposed date (29-31 March).

## APPENDIX I

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## **APPENDIX II**

### **AGENDA**

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#### **I. OPENING OF THE MEETING**

#### **II. ADOPTION OF THE AGENDA**

#### **III. INFORMATION FROM THE SECRETARIAT**

- a. Decisions of the Committee of Ministers: renewal of the terms of reference of the CS-SS Committee.
- b. The concept of suitable employment in relation to unemployment benefits: Publication and dissemination of the Guide.
- c. Decisions of the CDCS of interest to the CS-SS: Social Cohesion Strategy Revised and Action Plan on Social Cohesion.
- d. Other information of interest to the CS-SS Committee.

#### **IV. SUPERVISION OF THE APPLICATION OF THE EUROPEAN CODE OF SOCIAL SECURITY (Art. 74)**

- e. 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
- f. Information submitted by Contracting Parties.

#### **V. CONTRIBUTION OF THE CS-SS TO THE IMPLEMENTATION OF THE ACTION PLAN ON SOCIAL COHESION**

#### **VI. EUROPEAN SOCIAL CHARTER: RESULTS OF THE LAST CONTROL CYCLE ON ARTICLES 12 (SOCIAL SECURITY), 13 (SOCIAL AND MEDICAL ASSISTANCE) AND 14 (SOCIAL WELFARE SERVICES)**

**VII. LATEST DEVELOPMENTS IN ILO SOCIAL SECURITY INSTRUMENTS**

**VIII. THE EUROPEAN CODE OF SOCIAL SECURITY REVISED: LATEST DEVELOPMENTS**

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

- g. State of signature and ratification of the Council of Europe's legal instruments in the field of Social Security.
- h. Bilateral and regional cooperation activities.
- i. Social Security Co-ordination Training Course, Zagreb 29 September - 1 October 2009 and next Training Course on Standard-Setting Instruments in the Social Security field, Switzerland, 2010.
- j. Social Security Co-ordination and Social Security Reforms in in South-East Europe (Instrument for Pre-Accession Assistance, IPA).

**X. THE IMPACT OF THE FINANCIAL CRISIS ON NATIONAL SOCIAL SECURITY SYSTEMS AND THE MEASURES TO REINFORCE THE SOCIAL PROTECTION OF MOST VULNERABLE GROUPS OF POPULATION**

- a. General presentation on this topic.
- b. Report analysing the measures taken or under consideration by member states in order to mitigate the negative impact of the current financial crisis and economic downturn on national social security systems as well as those reinforcing social protection against the crisis for the most vulnerable groups of population.

**XI. MAIN CURRENT OR PLANNED REFORMS IN SOCIAL SECURITY**

Information on important current or planned reforms in selected countries (according to the standard format, document CS-SS(2010)9).

**XII. BENEFITS IN RESPECT OF CHILDREN**

Report on this topic and discussion about possible follow-up.

**XIII. COORDINATION OF SOCIAL SECURITY**

**XIV. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY**

- XV. ELECTION OF THE CHAIRPERSON AND THE VICE-CHAIRPERSON OF THE CS-SS
- XVI. OTHER BUSINESS
- XVII. DATE OF THE NEXT MEETING OF THE CS-SS

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