



Protocol to the European Code of Social Security

Strasbourg 16.IV.1964

Preamble

The member States of the Council of Europe, signatory hereto,

Being resolved to establish a higher level of social security than that provided for in the provisions of the European Code of Social Security signed at Strasbourg on the 16th April 1964 (hereinafter referred to as "the Code");

Desirous that all member States of the Council should strive to achieve such higher level, with due regard to economic considerations in their respective countries,

Have agreed on the following provisions which have been prepared with the collaboration of the International Labour Office:

Section I

In respect of any member State of the Council of Europe which has ratified the Code and the Protocol thereto, and in respect of any State which has acceded to both these Acts, the following provisions shall replace the corresponding articles, paragraphs and sub-paragraphs of the Code:

Article 1, paragraph 1, sub-paragraph h, shall read:

The term "child" means:

- i a child under 16 years of age; or
- ii a child under school-leaving age or under 15 years of age, as may be prescribed, provided that in the case of a child continuing its education, apprenticed or invalid, it shall mean a child under 18 years of age;

Article 2, paragraph 1, sub-paragraph b, shall read:

- b At least eight of these Parts II to X for which the member State concerned has accepted the obligations of the Code in virtue of Article 3, provided that Part II shall count as two parts and Part V as three parts;

Article 2, paragraph 2, shall read:

- 2 The terms of sub-paragraph b of the foregoing paragraph can be regarded as fulfilled if:
 - a at least six of those Parts II to X for which the member State concerned has accepted the obligations of the Code in virtue of Article 3, including at least one of Parts IV, V, VI, IX and X are complied with; and
 - b in addition, proof is furnished that the social security legislation in force is equivalent to one of the combinations provided for in that sub-paragraph, taking into account:
 - i the fact that certain branches covered by sub-paragraph a of this paragraph exceed the standards of the Code in respect of their scope of protection or their level of benefits, or both;
 - ii the fact that certain branches covered by sub-paragraph a of this paragraph exceed the standards of the Code by granting supplementary services or advantages listed in Addendum 2 to the Code as modified by the Protocol; and
 - iii branches which do not attain the standards of the Code.

Article 9 shall read:

The persons protected shall comprise:

- a prescribed classes of employees, constituting not less than 80 per cent of all employees, and also their wives and children; or
- b prescribed classes of the economically active population, constituting not less than 30 per cent of all residents, and also their wives and children; or
- c prescribed classes of residents, constituting not less than 65 per cent of all residents.

Article 10, paragraphs 1 and 2, shall read:

- 1 The benefit shall include at least:
 - a in the case of a morbid condition;
 - i care by general practitioners, including domiciliary visiting, and care by specialists in accordance with prescribed conditions;
 - ii hospital care including maintenance, care by general practitioners or specialists as required, nursing and all auxiliary services required;
 - iii all necessary non-proprietary pharmaceutical supplies and proprietary preparations regarded as essential; and
 - iv conservative dental care for the children protected; and
 - b in the case of pregnancy, confinement and their consequences:
 - i pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives;

- ii hospitalisation where necessary; and
 - iii pharmaceutical supplies.
- 2 The beneficiary or his breadwinner may be required to share in the costs of the medical care which the beneficiary receives:
- a in case of morbid condition, provided that the rules concerning such cost-sharing shall be so designed as to avoid hardship, and that the part of the cost paid by the beneficiary or breadwinner shall not exceed:
 - i for care by general practitioners and specialists outside hospital wards: 25 per cent;
 - ii for hospital care: 25 per cent;
 - iii for pharmaceutical supplies: 25 per cent on the average;
 - iv for conservative dental care: 33 1/3 per cent;
 - b in case of pregnancy, confinement and their consequences, in respect of pharmaceutical supplies only for which the part of the cost paid by the patient or breadwinner shall not exceed 25 per cent on the average; the rules concerning such cost-sharing shall be so designed as to avoid hardship;
 - c where cost-sharing takes the form of a fixed sum in respect of each case or course of treatment or each prescription of pharmaceutical supplies, the total of such payments made by all persons protected in respect of any one of the types of care referred to in sub-paragraphs a or b shall not exceed the specified percentage of the total cost of that type of care within a given period.

Article 12 shall read:

The benefits specified in Article 10 shall be granted throughout the contingency covered, except that hospital care may be limited to 52 weeks in each case or to 78 weeks in any consecutive period of three years.

Article 15, paragraphs a and b, shall read:

The persons protected shall comprise:

- a prescribed classes of employees, constituting not less than 80 per cent of all employees;
or
- b prescribed classes of the economically active population constituting not less than 30 per cent of all residents; or

Article 18 shall read:

The benefit specified in Article 16 shall be granted throughout the contingency, except that it need not be paid for the first three days of suspension of earnings and may be limited to 52 weeks in each case of sickness or to 78 weeks in any consecutive period of three years.

Article 21, paragraph a, shall read:

The persons protected shall comprise:

- a prescribed classes of employees constituting not less than 55 per cent of all employees;
or

Article 24 shall read:

- 1 Where classes of employees are protected, the duration of the benefit specified in Article 22 may be limited to 21 weeks within a period of 12 months, or to 21 weeks in each case of suspension of earnings.
- 2 Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit specified in Article 22 shall be granted throughout the contingency. Provided that the duration of the prescribed benefit guaranteed without a means test may be limited in accordance with paragraph 1 of this article.
- 3 Where national laws or regulations provide that the duration of the benefit shall vary with the length of the contribution period and/or the benefit previously received within a prescribed period, the provisions of paragraph 1 shall be deemed to be fulfilled if the average duration of benefit is at least 21 weeks within a period of 12 months.
- 4 The benefit need not be paid:
 - a for the first three days in each case of suspension of earnings, counting the days of unemployment before and after temporary employment lasting not more than a prescribed period as part of the same case of suspension of earnings; or
 - b for the first six days within a period of twelve months.
- 5 In the case of seasonal workers, the duration of the benefit and the waiting period may be adapted to their conditions of employment.
- 6 Measures shall be taken to maintain a high and stable level of employment in the country, and appropriate facilities shall be provided to assist unemployed persons to obtain suitable new work including placement services, vocational training courses, assistance in their transfer to another district when necessary to find suitable employment, and related services.

Article 26, paragraphs 2 and 3, shall read:

- 2 The prescribed age shall be not more than 65 years or than such higher age that the number of residents having attained that age is not less than 10 per cent of the number of residents under that age but over 15 years. Provided that, where prescribed classes of employees only are protected, the prescribed age shall be not more than 65 years.
- 3 National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if he is engaged in any prescribed gainful activity, or that the benefit, if contributory, may be reduced whenever the earnings of the beneficiary exceed a prescribed amount.

Article 27, paragraphs a and b, shall read:

The persons protected shall comprise:

- a prescribed classes of employees, constituting not less than 80 per cent of all employees; or
- b prescribed classes of the economically active population, constituting not less than 30 per cent of all residents; or

Article 28, paragraph b, shall read:

- b where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67. Provided that a prescribed benefit shall be guaranteed without means tests to the prescribed classes of persons determined in accordance with sub-paragraphs a or b of Article 27, subject to qualifying conditions not more stringent than those specified in paragraph 1 of Article 29.

Article 32, paragraph d, shall read:

- d the loss of support suffered by the widow or child as the result of the death of the breadwinner.

Article 33 shall read:

The persons protected shall comprise prescribed classes of employees constituting not less than 80 per cent of all employees and, for the benefit in respect of the death of the breadwinner, also their wives and children.

Article 41 shall read:

The persons protected shall comprise, in so far as periodical payments are concerned:

- a prescribed classes of employees, constituting not less than 80 per cent of all employees; or
- b prescribed classes of the economically active population, constituting not less than 30 per cent of all residents.

Article 44 shall read:

The total value of the benefits granted in accordance with Article 42 shall be such as to represent 2 per cent of the wage of an ordinary adult male labourer as determined in accordance with the rules laid down in Article 66 multiplied by the total number of children of all residents.

Article 48 shall read:

The persons protected shall comprise:

- a all women in prescribed classes of employees, which classes constitute not less than 80 per cent of all employees, and, for maternity medical benefit, also the wives of men in these classes; or
- b all women in prescribed classes of the economically active population, which classes constitute not less than 30 per cent of all residents, and, for maternity medical benefit, also the wives of men in these classes.

Article 49, paragraph 2, shall read:

- 2 The medical care shall include at least:
 - a pre-natal, confinement and post-natal care, either by medical practitioners or by qualified midwives;
 - b hospitalisation where necessary; and
 - c pharmaceutical supplies; the patient or her breadwinner may be required to share in the cost of the pharmaceutical supplies the beneficiary receives. The rules concerning such cost-sharing shall be so designed as to avoid hardship, and the part of the cost paid by the beneficiary or breadwinner shall not exceed 25 per cent on the average. Where cost-sharing takes the form of a fixed sum in respect of each prescription, the total of such payments made by all persons protected shall not exceed 25 per cent of the total cost within a given period.

Article 54 shall read:

The contingency covered shall include inability to engage in any gainful occupation to an extent prescribed, which inability is likely to be permanent or to persist after the exhaustion of sickness benefit. Provided that the prescribed extent of such inability shall not exceed two-thirds.

Article 55, paragraphs a and b, shall read:

The persons protected shall comprise:

- a prescribed classes of employees, constituting not less than 80 per cent of all employees;
or
- b prescribed classes of the economically active population, constituting not less than 30 per cent of all residents; or

Article 56 shall read:

- 1 The benefit shall be a periodical payment calculated as follows:
 - a where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66;
 - b where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67. Provided that a prescribed benefit shall be guaranteed without a means test to the prescribed classes of persons determined in accordance with sub-paragraphs a or b of Article 55, subject to qualifying conditions not more stringent than those specified in paragraph 1 of Article 57.
- 2 Measures shall be taken to provide for functional and vocational rehabilitation services, and to maintain appropriate facilities to assist handicapped persons in obtaining suitable work, including placement services, assistance in helping them transfer to another district when necessary to find suitable employment, and related services.

Article 74, paragraphs 1 and 2, shall read:

- 1 Each member State which has ratified the Code and this Protocol shall submit to the Secretary General an annual report concerning the application of these Acts. This report shall include:
 - a full information concerning the laws and regulations by which effect is given to the provisions of these Acts covered by the ratification; and
 - b evidence of compliance with the statistical conditions specified in:
 - i Articles 9.a, b or c; 15.a or b; 21.a; 27.a or b; 33; 41.a or b; 48.a or b; 55.a or b; 61.a or b, as regards the number of persons protected;
 - ii Articles 44, 65, 66 or 67, as regards the rates of benefit;
 - iii Article 24, paragraph 2, as regards duration of unemployment benefit; and
 - iv Article 70, paragraph 2, as regards the proportion of the financial resources constituted by the insurance contributions of employees protected.

Such evidence shall as far as possible be presented in such general order and manner as may be suggested by the Committee.

- 2 Each member State which has ratified the Code and this Protocol shall furnish to the Secretary General, if so requested by him, further information of the manner in which it has implemented the provisions of these Acts covered by its ratification.

Article 75 shall read:

- 1 After consulting the Consultative Assembly, if it considers it appropriate, the Committee of Ministers shall, by a two-thirds majority in accordance with Article 20, paragraph d, of the Statute of the Council of Europe, decide whether each member State which has ratified the Code and this Protocol has complied with the obligations of the Code and the Protocol that it has accepted.
- 2 If the Committee of Ministers considers that a member State which has ratified the Code and this Protocol is not complying with its obligations under these Acts, it shall invite the said member State to take such measures as the Committee of Ministers considers necessary to ensure such compliance.

Article 76 shall read:

Each member State which has ratified the Code and this Protocol shall report every two years to the Secretary General on the state of its law and practice in regard to any of Parts II to X of the Code and the Protocol thereto which such member has not specified in its ratification of the Code and the Protocol in virtue of Article 3 or in a notification made subsequently in virtue of Article 4.

Article 79 shall read:

- 1 After the entry into force of this Protocol, the Committee of Ministers may invite any State not being a member of the Council of Europe to accede to the Protocol. The accession of such State shall be subject to the same conditions and procedure as laid down in the Protocol with regard to ratification.

- 2 A State shall accede to this Protocol by depositing an instrument of accession with the Secretary General. This Protocol shall come into force for any State so acceding one year after the date of deposit of its instrument of accession.
- 3 The obligations and rights of an acceding State shall be the same as those provided for in this Protocol for member States which have ratified the Protocol.

Article 80 shall read:

- 1 The Code and/or this Protocol shall apply to the metropolitan territory of each member State for which it is in force and of each acceding State. Each member State or each acceding State may, at the time of signature or of the deposit of its instrument of ratification or accession, specify, by declaration addressed to the Secretary General, the territory which shall be considered to be its metropolitan territory for this purpose.
- 2 Each member State ratifying the Code and/or this Protocol or each acceding State may, at the time of deposit of its instrument of ratification or accession, or at any time thereafter, notify the Secretary General that the Code and/or this Protocol shall, in whole or in part and subject to any modifications specified in the notification, extend to any part of its metropolitan territory not specified under paragraph 1 of this article or to any of the other territories for whose international relations it is responsible. Modifications specified in such notification may be cancelled or amended by subsequent notification.
- 3 Any member State for which the Code or the Code and this Protocol is in force or any acceding State may, at such time as it can denounce the Code and/or this Protocol in accordance with Article 81, notify the Secretary General that the Code and/or the Protocol shall cease to apply to any part of its metropolitan territory or to any of the other territories to which the Code and/or the Protocol has been extended by it in accordance with paragraph 2 of this article.

Article 81 shall read:

Each member State which has ratified the Code and this Protocol and each State which has acceded to them may denounce the Code and the Protocol or only the Protocol or any one or more of Parts II to X of these Acts only at the end of a period of five years from the date on which the Code and/or the Protocol thereto entered into force respectively for such a member State or acceding State, or at the end of any successive period of five years, and in each case after giving one year's notice to the Secretary General. Such denunciation shall not affect the validity of the Code and/or of the Protocol in respect of the other member States which have ratified them or in respect of the other States which have acceded to them, provided that at all times there are not less than three such member States or acceding States Parties to the Code and not less than three such member States or acceding States Parties to the Protocol.

Article 82 shall read:

The Secretary General shall notify the member States of the Council, the government of any acceding State and the Director General of the International Labour Office:

- i of the date of entry into force of this Protocol and the names of any member States who ratify it;
- ii of the deposit of any instrument of accession in accordance with Article 79 and of such notifications as are received with it;
- iii of any notification received in accordance with Articles 4 and 80; and
- iv of any notice received in accordance with Article 81.

Section II

- 1 No member State of the Council of Europe shall sign or ratify this Protocol without having simultaneously or previously signed or ratified the European Code of Social Security.
- 2 No State shall accede to this Protocol without having simultaneously or previously acceded to the European Code of Social Security.

Section III

- 1 This Protocol shall be open to signature by the member States. It shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary General, provided that the Committee of Ministers in appropriate cases has previously given an affirmative decision as provided for in Section IV, paragraph 4.
- 2 This Protocol shall enter into force one year after the date of the deposit of the third instrument of ratification.
- 3 As regards any Signatory ratifying subsequently, this Protocol shall enter into force one year after the date of deposit of its instrument of ratification.

Section IV

- 1 Any Signatory wishing to avail itself of the provisions of Article 2, paragraph 2 of the Code as amended by the Protocol shall, before ratification, submit to the Secretary General a report showing to what extent its system of social security is in conformity with the provisions of this Protocol.

Such report shall include a statement of:

- a the relevant laws and regulations; and
- b evidence of compliance with the statistical conditions specified in the following provisions of the Code as amended by this Protocol:
 - i Articles 9.a, b or c; 15.a or b; 21.a; 27.a or b; 33; 41.a or b; 48.a or b; 55.a or b; 61.a or b, as regards the number of persons protected;
 - ii Articles 44, 65, 66 or 67, as regards the rates of benefit;
 - iii Article 24, paragraph 2, as regards duration of unemployment benefit; and
 - iv Article 70, paragraph 2, as regards the proportion of the financial resources constituted by the insurance contributions of employees protected; and
- c all elements which the Signatory wishes to be taken into account, in accordance with Article 2, paragraphs 2 and 3 of the Code as amended by this Protocol.

Such evidence shall, as far as possible, be presented in such general order and manner as may be suggested by the Committee.

- 2 The Signatory shall furnish to the Secretary General, if so requested by him, further information on the manner in which its system of social security is in conformity with the provisions of this Protocol.

- 3 Such report and further information shall be examined by the Committee which shall take into account the provisions of Article 2, paragraph 3 of the Code. The Committee shall submit to the Committee of Ministers a report containing its conclusions.
- 4 The Committee of Ministers shall, by a two-thirds majority in accordance with Article 20, paragraph d of the Statute of the Council of Europe, decide whether the system of social security of such Signatory is in conformity with the requirements of this Protocol.
- 5 If the Committee of Ministers decides that the said social security scheme is not in conformity with the provisions of this Protocol, it shall so inform the Signatory concerned and may make recommendations as to how such conformity may be effected.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of April 1964, in French and English, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe, and of which the Secretary General shall send certified copies to each of the signatory and acceding States and to the Director General of the International Labour Office.