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

4th meeting
(Strasbourg, 24-26 March 2009)

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 fourth 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

3. Ms Verena Taylor, Head of the Social Policy Department since 1 July 2008, welcomed participants and informed the committee of the conclusions of the 1st Council of Europe Conference of Ministers responsible for Social Cohesion, held in Moscow on 26 and 27 February 2009 on the theme "Investing in Social Cohesion: Investing in Stability and the Well-Being of Society". The conference had been attended by delegations from 38 member states and the Holy See, including 28 ministers, deputy ministers or state secretaries. Mr Vladimir Putin (Prime Minister of the Russian Federation) had welcomed participants and given an address on the importance of social policies during an economic downturn, with specific reference to new social measures introduced in the Russian Federation. The main discussion topics had reflected the points raised in the report by the High-Level Task Force on Social Cohesion. The conference had adopted a Final Declaration reaffirming that social cohesion supported the Council of Europe's core objectives. The ministers had also agreed that the Social Cohesion Strategy, adopted in 2000 and revised in 2004, should be reviewed in the light of the Task Force's report and that a Council of Europe Action Plan should be drawn up in the field of social cohesion. Social security ought to be a key focus of the action plan.

Ms Eva Pedersen, Chair of the CS-SS, agreed that social security should be a central pillar of the Council of Europe's work on social cohesion.

4. Mr Karl-Friedrich Bopp, Head of the Social Cohesion Policy and Standards Division, also welcomed participants and informed the committee of the division's recent restructuring. The new division merged the former Access to Social Rights Division, which he had headed since June 2006, and the former Social Security Division.

**IV. 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*

5. Mr Alexander Egorov, from the 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(2009)6).

6. The ILO committee of experts had examined 20 annual reports covering the period from 1 July 2007 to 30 June 2008. Mr Egorov was pleased to note that the committee had identified 12 situations over the past eight years in which domestic legislation had been improved. There were two new cases of progress in 2008: Ireland had issued a circular to relevant officials with a view to giving full effect to Article 68 (f) of the Code (wilful misconduct); and Luxembourg had passed a legislative amendment making it possible to adapt the maximum duration of sickness insurance benefit and the reference period in specific situations where necessary.

7. The committee of experts had also noted a number of departures from the Code in the practice of Belgium, Greece, Norway and the United Kingdom, as well as problems concerning the calculation of the benefits for which it offered technical assistance. It noted two cases of unprecedented reform, in the Netherlands (which had merged disability and unemployment benefits) and Sweden (which had merged invalidity and sickness benefits).

8. Ratification of the Code was progressing well, and he urged those countries that intended to ratify it not to go back on their decision because of the crisis. Such a stance would send a very reassuring political signal. In its conclusions, the committee of experts had also discussed the financial crisis. Increased social benefits should be made part of the solution, and the responsibilities of the public and private sectors in the social security field should be rebalanced. Social security systems must be financed on the basis of solidarity between present and future generations; the Council of Europe and ILO conventions in this area laid down common parameters. Lastly, countries were invited to find joint solutions to the crisis.

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

11. Turkey

The ILO representative said that Turkey's annual report was very detailed, providing a great deal of information about social security reforms and the establishment of new institutions.

The Turkish delegate said that the purpose of her country's social security reforms was to replace the three separate existing systems for public servants, employees and the self-employed with a workable unified system. She had two comments to make about the committee of experts' conclusions: as regards insured persons' contributions, their income was taken into account by the social security institution responsible for setting a (contribution) rate of between 10 and 20%; and the daily temporary incapacity allowance in the event of confinement was paid for a total of 16 weeks (eight weeks before and eight weeks after confinement).

The ILO representative noted that there had been a misunderstanding as to the duration of maternity benefits, which was in fact 16 weeks rather than eight as indicated by the committee of experts.

12. Czech Republic

The ILO representative noted that the committee of experts had asked solely about family benefits.

The Czech delegate did not make any particular comments.

13. Switzerland

The Swiss delegate noted the comments made, to which Switzerland would respond in its next report.

14. Sweden

The ILO representative noted that Sweden's new reforms (incorporating invalidity benefit into the health insurance system) redefined the benefits paid in the event of sickness or incapacity for work. This was an unprecedented situation, and the committee of experts would need more technical details in order to understand the reform. Comments had also been made about social security governance.

The Swedish delegates clarified the comments on invalidity and sickness benefits and unemployment benefit.

As regards sickness and invalidity benefits, people's capacity to work was assessed on the basis of their ordinary employment so as to facilitate their return to work. The time limit was 6 months and could be extended to 12 months. The purpose of this new time limit was to guarantee a return to work under appropriate conditions. The Swedish government had noted the request for an English translation of the relevant provisions of the new legislation, which it would provide with the next report.

As regards unemployment, Sweden pursued an active labour market policy. It had been criticised by the OECD and EU for its very high unemployment benefits, which supposedly discouraged people from seeking work. In response to the committee of experts' comments, Sweden supplied a number of statistics: more than 40 people per month had been subject to

sanctions in 2008. Of the 520 sanctions applied, 209 had been imposed during the initial 21-week period, while the majority had taken effect at the end of the 21-week period. Of those 209, 5% had been imposed after 40 days. Out of a total of more than 500, 54 had been appealed. It could therefore be concluded that the legal framework did not punish the unemployed, but encouraged active job-seeking. The waiting period had been increased from five to seven days in order to prevent short-term unemployment and boost people's chances of finding work.

The ILO representative said he was very pleased to receive this information.

The Swedish delegate accepted the conclusions, and said she would come back to some of the information requested when dealing with Part IX, concerning current and proposed reforms.

15. Slovenia

The Slovenian delegate thanked the committee of experts and said she was pleased her country fulfilled the Code's provisions.

16. Portugal

The ILO representative noted that Portugal satisfactorily applied all those parts of the Code and Protocol which had been accepted, and that the report answered the questions raised.

The Portuguese delegate was pleased that the committee did not have any particular comments.

17. United Kingdom

The ILO representative said that the committee of experts had asked about unemployment benefits and the new allowance that could be paid once sickness benefit had come to an end. In respect of retirement pensions, questions had been raised about the current reform and the role of the private pension system. This was important for establishing whether the two pension systems would provide the required replacement level in the long term.

The United Kingdom delegate thanked the committee of experts, and said that the information requested would be supplied in the next report.

18. Netherlands

The ILO representative said that the Netherlands had been regarded as a case of progress the previous year. However, the November 2005 Work and Income Act defined full and permanent incapacity as the inability to earn more than 20% of the reference income, meaning a loss of at least 80% of earning capacity. This threshold seemed too high, given the 66.6% level stipulated in the Protocol. The committee suggested that permanently incapacitated persons with 65-80% disability be included under the definition of full and permanent incapacity.

The Netherlands delegate explained the reasons behind the reform of the Work and Income (Employment Capacity) Act. The rules were as follows: in order to be classed as fully disabled, a person must have lost 80% of his or her earning capacity, in which case a benefit equal to 75% of his or her salary would be paid until the age of 65. The Netherlands did not see any reason to change the definition of full or partial incapacity, since that would reduce the scope for active employment measures. In the event of a 35-45% loss of capacity to work, the emphasis was placed on what people could do rather than what they could not do.

The ILO representative said that the system was unexpected, and it would remain to be seen how it fitted in with the Code's requirements, insofar as the new rules might put vulnerable people under more pressure. He asked the Netherlands to supply figures demonstrating positive outcomes in terms of reduced absenteeism and the employment of people with disabilities.

According to the Netherlands delegate, the intention was not to exert physical or mental pressure, but to encourage people to return to work. He agreed to provide figures.

19. Luxembourg

The ILO representative noted the committee of experts' detailed comments on the application of Article 18 of the Code, which highlighted a very positive development. The committee had also commented on the governance and organisation of social security, noting that the establishment of a central body should make the system more efficient.

The Luxembourg delegate thanked [the ILO for its](#) conclusions and commented on the [aggregation](#) of periods of incapacity for work and the "privatisation" of sickness risks. In respect of the former point, the underlying aim was to ensure rapid decisions on the type [of measures required and the kind of benefits to be granted](#). Relevant information would be submitted in the next report.

As regards the privatisation of social security and [the obligation imposed](#) on employers to pay salaries in the event of illness, these were part of a whole series of labour law measures. In Luxembourg, a distinction was made between manual and non-manual workers. This distinction was no longer justified; the measures in question were designed to bring the entire system into line with the most favourable conditions, namely those of non-manual workers in the private sector, including the maintenance of full pay in the event of incapacity for work. The continued payment of salaries had been a worker demand, to which the government had [reacted in close consultation with labour and management by proposing a legislative amendment](#). It was no longer expedient for social security to be made to bear the financial burden of payment for sick leave when at the same time the manual and non-manual workers and the employers had little interest in more effective supervisory measures. The new machinery had the virtue of giving both parties more responsibility. In order to guard against workers being selected on the basis of their medical history, tripartite groups had been set up to analyse the impact of the new legislation. Their analysis would focus not only on individual cases, but also on the profile of companies with particularly high levels of absenteeism.

As regards the merger of social security institutions, the purpose of such centralisation was not to reduce administrative costs, but to improve the service provided to insured persons.

20. Norway

The ILO representative referred to the committee's comments on unemployment benefits; when unemployment increased, there was a risk that criteria relating to suitable employment might be applied more stringently. Accordingly, the committee continued to keep a close eye on each country's legislation and practice.

The Norwegian delegate explained that the Labour and Welfare Service's role was to help the unemployed find suitable employment; accordingly, people were normally offered a job only if it corresponded to their education and qualifications. Other criteria were also taken into account, however, and a job might be deemed suitable even if individual circumstances and the labour

market situation meant it was remunerated at a level below the unemployment benefit. Nevertheless, the labour market situation was not taken into consideration during the first three months of unemployment. Norway intended to follow Denmark's example by manually examining all cases of sanctions for refusal to take up a job offer, in order to assess the extent to which the unemployed refused job offers on the grounds that they were "unsuitable".

21. Italy

The ILO representative referred to Italy's growing use of computerisation in recent years. The committee asked the government, in its next report, to indicate the steps it had taken to prevent the risk of computer failures and possible losses of data.

The Italian delegate said that Italy had made considerable progress in this area. She gave details of the fault recovery plan and the types of backup mechanism and storage area used to guard against the loss of data. In addition, insured persons could request data relating to their contributions, which were sent to them in any event as they neared retirement.

The ILO representative said he was reassured; such issues were common to all those states having opted for computerised management of their social security systems, and it would be very helpful to put the directors of the main computerised centres in touch with one another.

22. Ireland

The ILO representative emphasised Ireland's progress, saying that the situation there gave effect to the Code's provisions.

The Irish delegate said he was pleased to note the committee of experts' conclusions concerning his country.

23. Greece

The ILO representative referred to the committee's request that, in its next report, Greece indicate the steps it had taken to give full effect to Article 36.2 of the Code (long-term benefits at a reduced rate for employment injury victims).

The Greek delegate confirmed that an "ad hoc" group had been set up to explore the possibility of amending the legislation, and that explanations would be provided in the next report.

24. France

The ILO representative noted that the committee of experts had commented extensively on the measures taken by France, particularly with a view to combating fraud.

The French delegate thanked the committee for its comments on good practice. She was unable to answer the questions about the system's financial equilibrium immediately, but that information would be provided in the next report. As regards a cost-benefit analysis of the anti-fraud policy, the cost was not very high; it was not a matter of setting up new institutions, but of reorganising resources and monitoring financial records at the local, regional and national levels.

25. Estonia

The ILO representative said that the questions raised were highly technical, and that the

government had promised improvements in respect of two points (sickness and maternity benefits).

The Estonian delegate said that the questions about unemployment benefits would be answered in the next report. She confirmed that the old-age pension of a person retiring in 2007 after 30 years of service was calculated by adding together a base amount plus a length-of-service component. She also confirmed that an old-age pensioner's dependent wife 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.

The ILO representative thanked her for giving such detailed answers.

26. Spain

The ILO representative noted that Spain had been asked for statistics on the reform of the social security system.

The Spanish delegate said that the reform was intended to improve the link between contributions and benefits. The changes were covered by transitional provisions; information would be provided in the next report.

27. Denmark

The ILO representative referred to the highly technical comments concerning the calculation of periodical payments, and suggested that these issues be resolved by means of direct contact between national specialists and Council of Europe and ILO experts.

The Danish delegate was pleased to accept this offer to organise bilateral consultation in the coming months.

28. Cyprus

There were no particular comments to make in relation to the conclusions concerning Cyprus.

29. Belgium

The ILO representative said that the committee would review the issue of the high rate of cost-sharing by insured persons for care provided by general medical practitioners and specialists on the occasion of the government's next detailed report in 2011.

The Belgian delegate said that the necessary information would be supplied in the detailed report so that the committee could review the issue of cost-sharing by insured persons in 2011. As regards individual cost-sharing, the committee had always favoured an individual, micro-economic approach, and the former CS-CO committee had also followed this interpretation. The ILO representative concurred; the case-law had not changed, but it did take account of the government's efforts in this respect.

The Belgian delegate also took note of the observations about unemployment benefits, which would be passed on to the Employment Ministry.

30. Germany

The German delegate, who had been unable to attend the meeting, had endorsed the conclusions by e-mail.

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 for the period from 1 July 2007 to 30 June 2008, as set out in Appendix III.

32. These draft resolutions would be placed on the agenda for the meeting on 26 May 2009, then forwarded to the Committee of Ministers for adoption at its meeting in June 2009. The draft resolutions would be forwarded to the European Committee for Social Cohesion (CDCS) for information so that it could discuss them at its next meeting, on 26 and 27 May 2009.

V. APPLICATION OF ARTICLE 76 OF THE EUROPEAN CODE OF SOCIAL SECURITY

Report by the Group of Consultants for the Application of Article 76 of the European Code of Social Security

33. The Group of Consultants for the Application of Article 76, which had been instructed by the Council of Europe to evaluate the reports submitted by member states on non-accepted parts of the Code, had held its 19th meeting in Leuven on 12 and 13 February 2009. The Group had adopted conclusions on non-accepted parts of the Code for the period from 1 July 2006 to 30 June 2008.

34. Its secretary, Ms Ana Gomez, presented the Group of Consultants' main observations (document CS-SS (2009) 9). The consultants considered that, of the 35 non-accepted parts of the Code, at least 12 could be accepted by those countries having partially ratified it. They also pointed out that the Revised Code offered a degree of flexibility, allowing some countries to accept the relevant parts of that instrument.

The consultants had also examined two of the questions submitted at the CS-SS's second meeting in 2007, giving their own interpretation.

The Group of Consultants had taken a particular interest in the administration of social security systems (Article 71.1 of the Code), about which it invited the Contracting Parties to provide information.

35. Neither the delegates of the Contracting Parties to the European Code of Social Security nor the committee as a whole made any comments.

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 – THE EXAMPLE OF THE SOCIAL MOBILITY PROJECT

36. Ms Lindsay Youngs presented the main components of the new activity on "Social Mobility as a Major Condition for Social Cohesion", including the terms of reference of the Committee of Experts on Fostering Social Mobility (CS-SM).

Generally speaking, social mobility meant the movement of individuals within a given society between social positions that were known to be unequal insofar as they did not all secure the same economic or symbolic advantages.

This activity had been launched on the recommendation of the High-Level Task Force (HLTF) on Social Cohesion in the 21st Century. The HLTF took the view that social mobility tied in with the need to build the future and promote education. The CDCS had entrusted its implementation to a committee of experts, which had been instructed to:

- collect examples of good practice to foster social mobility;
- compare social mobility in different European countries;
- identify ways of promoting the concept of social mobility, also as a means of enhancing cohesion between generations;
- develop policy guidelines, and if the committee considered it appropriate, a draft recommendation on strategies to promote social mobility as a contribution to social cohesion.

The committee was to hold its first meeting on 5 and 6 May 2009.

Ms Youngs hoped the committee's work would incorporate the social security aspect, and asked the CS-SS to contribute to the project.

37. The CS-SS had considered how social security could contribute to upward social mobility, along with ways of limiting downward social mobility.

It had suggested the following social security issues, which affected social mobility: active employment measures, the structure of health care systems and support for the most disadvantaged families, mobility registers in some countries, labour market flexibility coupled with security in the area of social protection, access to social benefits, and an analysis of gaps in social security cover.

38. Countries were invited to put forward the names of specialists who could give the Committee of Experts on Fostering Social Mobility (CS-SM) the benefit of their expertise in the social security field. Their suggestions needed to reach the Secretariat by 8 April 2009 at the latest, since the CS-SM was to hold its first meeting on 5 and 6 May 2009.

VII. RECENT DEVELOPMENTS IN THE ILO'S WORK ON SOCIAL SECURITY

39. Mr Krzysztof Hagemejer, Head of Policy Development and Research in the ILO's Social Security Department, outlined the organisation's recent work on the Global Campaign on Social Security and Coverage for All.

One strand of the campaign, launched in 2003, looked at how ILO conventions were applied. Regional and inter-regional meetings had been held in 2007 and 2008, and a number of publications and studies produced. A key event had been the 2008 International Labour Conference, which had reaffirmed the ILO's mandate in the Declaration on Social Justice for a Fair Globalization. In November 2008, the ILO's Governing Body had examined a report on social security standards and the campaign to extend social security. The report covered the

four tiers of the campaign strategy: generation and dissemination of knowledge in the social security field; policy development; capacity building; and technical co-operation. It also contained the following crucial political messages: social security benefits were a powerful tool to combat poverty; social security was a key component in economic and social development; and the gradual introduction of a basic social security package should be affordable almost everywhere.

The campaign strategy was based on the fact that social security comprised several levels: a basic set of universal social security guarantees; a compulsory contributory social security system; and, at a higher level, voluntary insurance. Many countries lacked the basic level of protection.

The evaluation of the campaign had yielded a number of conclusions. Social security standards were still valid, but new instruments were needed in order to encourage countries to implement existing standards. The ILO was currently discussing various solutions, ranging from drawing up clearer guidelines on the implementation of existing conventions to adopting a new recommendation or convention dealing specifically with social assistance and other non-contributory arrangements.

The next stages in this process were the tripartite meeting in September 2009 and the 2011 International Labour Conference. In the meantime, the ILO's Governing Body had decided in March 2009 to conduct a general survey on the following four social security instruments: Conventions Nos. 102 and 168 and Recommendations Nos. 67 and 69.

40. The committee took note of this information and thanked Mr Hagemeyer for his presentation.

VIII. 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

41. Representatives of the member states were invited to report 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).

42. The Romanian delegate said that her country had completed the procedure for ratifying the European Code of Social Security, and that a bill on ratification was before Parliament. She hoped the law would be passed in the near future, and that the Code could be ratified before the end of the year.

43. The Latvian delegate also said that a bill allowing ratification of the European Code of Social Security was before Parliament; it should be ratified in late summer or early autumn, at the same time as the Revised Charter.

44. The Netherlands delegate said that his country had denounced Part VI of the Code (employment injury), and wished to adhere to the more modern standards of the Revised Code. The Second Chamber of Parliament had endorsed the ratification of the Revised Code; for the past year the matter had been before the Senate, which had not yet taken a decision. The Netherlands had ratified ILO Convention No. 183 on maternity protection.

45. The Russian delegate said that her country had decided in February to ratify the European Social Charter, which would make it easier to ratify the Code. An ad hoc group had been set up to examine Russian legislation in the light of the standards of the Charter and the Code.

46. The Lithuanian delegate said that her country was about to ratify the Code, but amendments to pension legislation meant it did not comply with Part V. It would report back in 2010.

47. The Cypriot delegate said that a bill had been drafted with a view to ratifying Part VII of the Code, and should soon be tabled in Parliament.

48. The Irish delegate said that the ratification of additional parts of the Code had been postponed.

49. The Slovakian delegate said that his country had just ratified the Revised Charter, and was in the process of examining the compatibility of national legislation with the Code's standards.

b. Bilateral and regional co-operation activities

50. The Ukrainian, Albanian, Azerbaijani, Moldovan, Spanish and Russian delegates reported on bilateral and regional co-operation activities implemented in the social security field since the previous CS-SS meeting in March 2008.

51. Ukraine had worked with the Council of Europe and the ILO on the compatibility of national legislation with the standards of the Code and ILO Convention No. 102. The financial crisis had held up the signature process, but the Ukrainian delegate hoped it would soon be resumed.

52. The Albanian delegate said that, with the Council of Europe's help, Albania and Turkey had signed a bilateral agreement on social security (particularly in the health field).

53. The Azerbaijani delegate reported on the seminar held in Baku in September 2008, and hoped there would be other opportunities to work with the Council of Europe.

54. The Moldovan delegate said that bilateral social security agreements had been signed with Bulgaria and Portugal, and that Moldova was keen to sign similar agreements with Spain, Italy and Greece.

55. The Spanish delegate reported on the meeting on family benefits held in Madrid on 26 February 2009, which had been organised in conjunction with the Council of Europe.

56. The Russian delegate said that the Russian Federation had signed a bilateral pension agreement with Bulgaria on the occasion of the Ministerial Conference on Social Cohesion held in Moscow on 26 and 27 February 2009.

c. 19th training course on social security, Madrid, 5-7 November 2008, and 20th training course, Zagreb, 29 September-1 October 2009

57. The Secretariat provided information about the 19th training course on social security, focusing on social security standard-setting instruments, held in Madrid from 5 to 7 November 2008 at the invitation of the Spanish authorities.

58. The delegates discussed the topics to be addressed at the 20th training course, to be held in Zagreb from 29 September to 1 October 2009 at the invitation of the Croatian authorities. In particular, they were invited to comment on the following issues (see document CS-SS(2009)11):

- If training courses on co-ordination instruments were to continue, how often should they be held? (every second or every third year?)
- What should the courses cover? (a section on Council of Europe instruments and another on EU instruments?)
- Should they include a session on bilateral social security agreements, using the Model Provisions for a Bilateral Social Security Agreement drawn up by the Council of Europe a few years earlier?

59. The committee agreed that training courses on co-ordination instruments should be organised once every three years, and that courses in the intervening two years should focus on standard-setting instruments. The next social security training course, to be held in Zagreb, would deal with co-ordination 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)

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

The Social Institutions Support Programme had finished in February 2008. A new 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 site.

IX. IMPACT OF THE FINANCIAL CRISIS ON NATIONAL SOCIAL SECURITY SYSTEMS

61. Mr Ole Beier Sørensen, Head of Analysis at the Danish Labour Market Supplementary Pension Scheme, gave a presentation on the impact of the financial crisis on national social security systems. The presentation was divided into three parts: 1) social security and the financial crisis; 2) what should and should not be done; 3) private social security: a neglected and misunderstood aspect.

We faced the worst financial crisis since the Second World War. Financial institutions had gone bankrupt, and the share market had collapsed. There had been a credit crunch; banks did not trust one another, resulting in a liquidity squeeze and loss of consumer confidence. The unemployment rate would rise, placing more pressure on social security systems.

The crisis had triggered rescue plans. Whereas deficits had previously represented minor sums, they had now reached disastrous levels and were having an impact on social security. The financial crisis was a temporary problem that must be faced, addressed and overcome, but there were also structural challenges requiring long-term solutions. These included population ageing and the declining workforce. The number of elderly people was set to double. More than half the population now reached the age of 80, and there was no reason to think this trend would stop by 2020. Danish data indicated that life expectancy at age 65 would increase by five years between now and 2055, with similar conclusions being drawn elsewhere.

Such longevity placed pressure on the population. If the retirement age were left at 65, there would be a 125% increase in the number of old-age pensioners by 2030. The ensuing financial burden might become a financial crisis of its own.

Social security expenditure would also increase. The elderly accounted for 50% of health expenditure and the very elderly for 40%, raising the issue of how all this was to be financed. Unless the right approach was adopted, conflicts would arise between generations, and between consumers of available resources and those in the labour market. The labour market also presented challenges, such as labour shortages and reduced growth.

Notwithstanding the financial crisis and unemployment, however, the key was to prepare for a longer working life.

What should be done: in the short term, introducing more flexibility; in the long term, lengthening working lives. The retirement age should be raised, and labour market participation increased. More women could be employed in some countries, but this was still a temporary solution.

Sustained growth called for a flexible labour market coupled with a degree of security to offset the risks associated with such flexibility.

Economies would come under pressure; both declared and hidden unemployment would rise considerably, as would the demand for disability and unemployment benefits. Social security could play a mediating role in the context of such changes, as it had already done in the past. The 1980s had been marked by weak growth, with many countries introducing measures such as early retirement, dispensations from work and more flexible benefit eligibility criteria. It had been thought that retirement would free up jobs for young people, but this had not proven to be the case. Lessons must be learned from the past.

What should not be done: concealing unemployment, relying on social security or loosening eligibility criteria; prolonged unemployment was dangerous, and people should continue to work as far as possible.

Jobs should be created, with social security systems encouraging people to seek work. Employment must be supported, with due regard to age and gender differences; integration measures and family-friendly policies should be introduced, and the education system extended.

Short-term measures must not overshadow long-term objectives.

Conclusion: population ageing was not new, and had given rise to pension reforms in many countries. One effect of such reforms had been to boost the role of private pensions. Social security systems should be relieved by encouraging employees to put part of their salary towards a pension. Most people were not competent investors, and would leave the administration of pension funds up to professional organisations – but just how professional were these organisations? The approaches, conditions and schemes they offered were paramount, as were the role of regulators and the proper co-ordination of public and private benefits.

62. The Swiss delegate commented that funded pension systems did not resolve the problems caused by population longevity, and that the World Bank's efforts to introduce funded systems in the 1990s had demonstrated their limitations. Might it not be a good idea to introduce a flexible retirement age, coupled with specific measures for businesses?

Mr Sørensen said that he did not know of a single country in which the introduction of a flexible retirement age had been a success. Most of the countries which had tried it had found that people tended to want to keep working for longer than was desirable, and that such measures meant people who would have stayed in the labour market in any case were paid to do so.

63. The ETUC representative drew a distinction between the official retirement age and the age at which people actually stopped working; half of all workers over the age of 55 in the EU did not carry on until the end of their working lives. In addition, the focus was often on labour force participation among the elderly, rather than among young people. Yet people's working lives were starting later and later, and finishing earlier and earlier. And what about the contribution made by immigration, which had not been mentioned? Lastly, there was room for both public and private systems, but it all depended on the balance between the two. In his view, public systems ought to provide a basic livelihood rather than simply preventing people from falling into extreme poverty, with private systems playing a complementary role. He also raised the issue of governance.

Mr Sørensen said that unemployment rates varied considerably between countries; this was also a reflection of different labour market structures and political choices. Migration might provide solutions, but increased mobility could also help. There was a range of possible solutions. Good governance, transparency and strict accounting rules were crucial to the funded pension scheme market.

64. The Slovakian delegate said that her country had introduced a funded pension scheme, but this reform itself now needed to be modified; many of those having joined the new system would not be able to amass enough money, and would need help from the state. In addition, the various international bodies and experts created confusion by advocating different solutions.

Mr Sørensen said it was important to modify the reforms, but the whole idea should not be

discarded. The fact that the funded pension scheme had not been a success did not mean the country should continue to rely solely on a contributory scheme. Some of the problems with funded schemes also resulted from the adoption of strategies based on the principle of a strong financial system.

65. The Finnish delegate said that the main problem was that pension systems were not designed to cope with people living longer. Finland had experimented with early retirement in the 1970s, and it was now difficult to go back. She raised two issues: how was social mobility perceived, and what could be done to ensure a decent pension system?

66. The Icelandic delegate provided information about the impact of the crisis in his country; it had resulted in the collapse of three banks representing 80% of the market, currency devaluation and higher unemployment. Iceland's pension system comprised three pillars, the first of which was a [state financed pay-as-you-go scheme](#) guaranteeing a means-tested payment of 1000€ per month for each pensionary. In view of the crisis, [the threshold for means testing had been raised meaning that much higher proportion of the pension is not attached by the means testing procedure plus that the pension was upgradet by 200€ for each pensionary.](#) The fully funded pension of the second pillar, [while not being means-tested itself, is also a subject for the means-testing procedure of the 1st pillars pension.](#) This is not the case what regards the third pillar pension. The third pillar [capital savings](#) had borne the brunt of the crisis, with losses of 15 to 25%. The government had allowed people to withdraw up to 10,000€ from their [third pillar savings accounts in order to meet new upcoming personal depts.](#) Notwithstanding the need to make cuts, the government had endeavoured to protect the social security system.

67. In Mr Sørensen's view, Iceland was using the social security system to tackle the crisis; Finland had done the same in the 1990s, with the effect of increasing unemployment. It was important to learn from others' experiences, for in choosing a system one also chose its problems. To answer the Finnish delegate's question as to how the social security system should respond to growing mobility, workforce retraining must be stepped up and the labour market adapted to the worst-off. Contributory systems had more problems with benefit co-ordination (although these were being addressed by the European Union) than funded systems, to which it made less difference if people changed country.

In answer to the Icelandic delegate's question about how confidence could be maintained, Mr Sørensen said that strict accounting and transparency regulations must be applied.

68. The United Kingdom delegate congratulated Mr Sørensen on his outstanding presentation, which had covered the main issues, including mobility, exclusion and equality. The British Prime Minister had argued that the global crisis could not be addressed by means of national responses, and that governments must act together and learn from one another. He emphasised the theme of the London Conference – productive employment – and the need to assist the most vulnerable. The G20 was keen to restore confidence, support economic growth and protect the very poor. The United Kingdom was continuing its policy of macro-economic stabilisation.

69. The delegates presented 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 and strengthen social protection against the crisis for the most vulnerable population groups.

The Netherlands delegate talked about measures to prevent redundancies, such as transitional arrangements implemented under certain conditions; reduced working hours were supplemented by unemployment benefits, so that employees received their full wage or salary. Other measures included the establishment of regional mobility centres to help people move during the crisis, and an obligation on private pension funds to build up reserves within three years.

70. The Russian delegate said that her country's social security system was playing an ever-greater role in response to the crisis; measures had been taken to increase pensions, unemployment benefits and a special benefit for mothers having given birth to their second child. The latter benefit could be used to repay housing loans.

71. The Finnish delegate emphasised the global nature of the current crisis, in contrast to the 1990s. One of her government's main concerns was to draw a clear distinction between short- and long-term reforms. Since the last recession, additional funding had been requested in order to avoid raising pension fund contributions.

72. The Swiss delegate said that her country had not introduced any specific measures. The main problems with the first pillar of the pension system (financed from contributions and government grants) were the increasing number of pensioners and their longevity, which was a structural issue. The invalidity insurance scheme was in an even worse predicament; financed from the same source, it might face serious problems if the proposed VAT increase were rejected. The second and third pillars, which were funded schemes, were also adversely affected by the increase in life expectancy. The idea of reducing the conversion rate used to calculate pensions was currently being debated, and was to be put to a referendum. She urged the committee to focus on funding issues, particularly the options available to states in order to deal with temporary situations, through the different types of benefits related to employment, unemployment, pensions and invalidity.

73. The Azerbaijani delegate said that his country's poverty rate had dropped from 49% in 2002 to 13.2% in 2008. The financial crisis had not had a negative impact on social security policy in Azerbaijan, and the level of expenditure had not decreased.

74. The Portuguese representative said that no specific measures to address the crisis had been taken in the field of social security proper, given that reforms had been introduced over the last few years to ensure the financial viability of the system, such as the overhaul of the pension system. She reported on the 2008 family benefit reforms intended to alleviate the effects of the crisis on lower income families, along with financial and fiscal measures and other specific employment support measures.

75. The Italian delegate talked about the Italian pension system and the measures taken to address the crisis. Italy had the lowest birth rate in Europe, and increasing longevity was having an impact on pensions. These factors had prompted it to modify its social security system. Immigration also played an important role. The Italian authorities were concentrating on raising the retirement age.

76. The Greek delegate outlined the measures taken to deal with the impact of the crisis, including specific employment support measures.

77. The Lithuanian delegate said that there had been a surge in social benefits as a result of the growing number of beneficiaries. An anti-crisis programme had been adopted, focusing on

employment law and employment support with a view to taking active steps to facilitate mobility. These included measures to combat unemployment, such as extended benefit periods for those attempting to enter the labour market; allowances for children up to the age of 5; and the introduction of a state social insurance system.

78. The Ukrainian delegate said that the government had introduced emergency measures in an effort to minimise the extent of the crisis and counter its social impact, such as: a plan to support public-sector jobs, retraining and skills acquisition; shorter working hours; and higher allowances. Pension fund contributions had increased, as well as benefits paid to pensioners.

79. The Croatian representative said that the crisis had affected private pension funds; they formed the second (voluntary) pillar, which had lost 15 to 20% of its value. The government was to propose a plan to rebalance the budget by means of a 6% reduction in public servants' salaries.

80. The Romanian delegate said that, after several years of economic growth, her country too had to contend with the global crisis. A number of measures had been taken, including, in the social field, the introduction of a minimum pension to support those living on the breadline, medical loans and unemployment benefits.

81. The French delegate said his government felt that social and family benefits were at a good level. France's funded pension scheme was not a serious problem, since it was fairly small. Steps had already been taken in 2008 to modernise labour market institutions: quarterly meetings on the unemployment insurance scheme, and revision of the law on the guaranteed minimum income for workers (*revenu de solidarité active*). These were employment activation measures, coupled with allowances to help people find another job or top up their earnings. In the light of the crisis, a number of measures had been brought forward with a view to preserving jobs, assisting young unemployed people and supporting the consumption of average-income households.

82. The Spanish delegate said that steps had been taken to stimulate the economy and employment and assist family businesses. The aim was to guarantee a minimum level of social protection in all branches. A number of measures had been introduced to help families with housing costs.

83. The ISSA representative said that his organisation had sent members a questionnaire on the impact of the crisis, and that a seminar on that theme was to be held in Geneva on 24 and 25 April. The seminar would include general reports, presentations on each country's experience and a round-table discussion.

84. The ETUC representative said that the crisis had eroded job security, while training had also been cut. He emphasised the relevance of Council of Europe instruments such as the European Code of Social Security, and the need for public social security systems based on solidarity. Such systems should serve to cushion the crisis.

85. The Austrian, Belgian and Irish delegates had submitted documents to the Secretariat prior to the meeting, listing the measures their countries had taken to deal with the crisis.

86. The committee discussed the action to be taken in this connection. It decided that each country would prepare a report by 31 July 2009 on the measures taken or under consideration in order to mitigate the negative impact of the current financial crisis and economic downturn on

national social security systems and strengthen social protection against the crisis for the most vulnerable population groups. This had already been requested of those countries having ratified the European Code of Social Security when they were asked to submit their annual reports, and the other countries would be sent the same request.

87. It was also decided that, in September, a consultant or group of experts should analyse the measures taken by member states and report to the next CS-SS meeting. To this end, countries were invited to put experts' names forward by **26 June 2009** at the latest.

X. MAIN CURRENT OR PLANNED SOCIAL SECURITY REFORMS

88. In accordance with paragraph 4 (viii) of the CS-SS's terms of reference, which instructed it to "observe pan-European trends and developments in the social security field", the Danish, Cypriot, Slovakian and Turkish delegates reported on a number of reforms.

Denmark had amended the Social Pension Act. Cyprus had increased contributions. The Slovak Republic was in the process of modifying its pension system with a view to offering greater security following the introduction of a funded scheme. Turkey had introduced a new universal health insurance scheme and was gradually raising the retirement age to 65 for both men and women in 2048.

XI. CHILD BENEFITS

89. Since the beginning of the 20th century, the world had seen considerable progress in the area of maternity protection. The large number of women in the labour market, the promotion of equality between the sexes and the growing concern about demographic and social issues meant that the maternity branch was becoming ever more important. Part VIII of the European Code of Social Security and its Protocol referred to maternity benefits, but most European countries had also introduced paternity benefits and statutory parental leave.

90. A study on "Leave and Benefits Associated with the Birth of a Child in Europe" had been prepared for discussion by the CS-SS. It contained a number of recommendations.

91. The committee discussed the follow-up to be given to this study (CS-SS (2009)8). It decided to analyse the new benefits, especially parental leave, in the light of the Council of Europe's standard-setting instruments (the Code, the Protocol and the Revised Code) and the co-ordination of social security systems. A discussion group could meet in Paris for this purpose in June. Countries were invited to put forward the names of experts on parental benefits who might be able to take part in the group, by **4 May 2009** at the latest.

XII. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS

92. The committee discussed the CS-SS's role in the co-ordination of social security systems, and proposed that the next training course in Croatia should focus on co-ordination, including bilateral social security agreements (see paragraph 59 of the report).

XIII. RENEWAL OF THE CS-SS'S TERMS OF REFERENCE

93. The committee's terms of reference were due to expire on 31 December 2009. The Secretariat had prepared the CS-SS's terms of reference for the next three years on the basis of Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods.

The committee proposed that its terms of reference be renewed until 31 December 2012.

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

94. Further to the decision taken at the CS-SS's third meeting, a group of experts had met in Paris on 24 and 25 June 2008 to prepare a guide on the way in which the concept of suitable employment was understood and applied in the various member states.

95. Ms Michèle Baukens, General Adviser to the Belgian National Employment Office (ONEM), who had taken part in the working group, presented the content of the guide (CS-SS(2008)6), which analysed 15 different criteria that countries used in defining or applying the concept of suitable employment.

96. The guide had been sent to committee members for comments and data updates.

97. The CS-SS approved the guide on suitable employment and authorised its publication. Countries wishing to make further changes to the factual data set out primarily in the appendices were asked to send them to the Secretariat by **20 April 2009** at the latest. It was suggested that the data in the guide be updated every two years.

XV. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY

98. The International Social Security Association (ISSA) representative outlined the latter's main activities; it was made up primarily of institutions and bodies responsible for managing particular aspects of social security in different countries around the world.

The main issues addressed by the ISSA were: social security administration and management; demographic changes; occupational hazards; and the extension of social security cover worldwide.

The financial crisis and its economic impact were another issue currently being addressed by the ISSA.

The ISSA also had a new website featuring data bases and information on each country, which he invited CS-SS members to visit: www.issa.int

99. The Icelandic delegate was disappointed that the European Commission had not sent a representative to the CS-SS meeting. The Secretariat confirmed that this was a one-off absence, as the Commission representative had other commitments.

XVI. OTHER BUSINESS

100. Delegates were invited to suggest topics for the CS-SS to discuss at forthcoming meetings. The following topics were suggested:

- the financial crisis;
- social security governance;
- child benefits;
- labour market retention of older workers;
- the risk of dependency;
- changes in pension systems.

101. The Norwegian delegate suggested that for future meetings, rather than each country presenting its reforms in turn, it would be better to compile an overview of the various reforms, according to a standard format if possible, so as to highlight the most interesting aspects without going into technical details.

XVII. DATE OF THE NEXT CS-SS MEETING

102. The next CS-SS meeting would be held in Strasbourg from Tuesday 20 April to Thursday 22 April 2010.

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APPENDIX II

AGENDA

I. OPENING OF THE MEETING

II. ADOPTION OF THE AGENDA

III. INFORMATION FROM THE SECRETARIAT

- a. The first Council of Europe Conference of Ministers responsible for Social Cohesion on “Investing in social cohesion: investing in stability and the well being of Society”, Moscow, 26-27 February 2009
- b. Decisions of the Committee of Ministers and of the CDCS of interest to the CS-SS Committee
- c. Other information of interest to the CS-SS Committee

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

- d. 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
- e. Information submitted by Contracting Parties

V. APPLICATION OF ARTICLE 76 OF THE EUROPEAN CODE OF SOCIAL SECURITY

Report of the Group of Consultants for the application of article 76 of the European Code of Social Security

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 – THE EXAMPLE OF THE SOCIAL MOBILITY PROJECT

VII. LAST DEVELOPMENTS IN THE ILO SOCIAL SECURITY AGENDA

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

- f. State of signature and ratification of the Council of Europe's legal instruments in the field of Social Security
- g. Bilateral and regional cooperation activities
- h. 19th training course on social security, Madrid 5-7 November 2008 and 20th training course, Croatia, 2009.
- i. Social Security Co-ordination and Social Security Reforms in SEE (IPA)

IX. THE IMPACT OF THE FINANCIAL CRISIS ON NATIONAL SOCIAL SECURITY SYSTEMS

Presentations followed by a debate on 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

X. MAIN CURRENT OR PLANNED REFORMS IN SOCIAL SECURITY

Information on important current or planned reforms - other than those related to the financial crisis - in selected countries

XI. BENEFITS IN RESPECT OF CHILDREN

Report on this topic and discussion about possible follow-up

XII. COORDINATION OF SOCIAL SECURITY

XIII. RENEWAL OF THE TERMS OF REFERENCE OF THE CS-SS COMMITTEE

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

Adoption of a guide to the way in which the concept of suitable employment is understood and applied in the various member states

XV. ACTIVITIES OF OTHER INTERNATIONAL BODIES RELEVANT TO SOCIAL SECURITY

XVI. OTHER BUSINESS

XVII. 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 CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Belgium
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on 2009
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 38th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part II (Medical care), Article 10.2.a.i of the Code, as amended by the Protocol, that in reply to the Committee of Ministers' previous resolutions, the government recognises that the cost sharing by insured persons with ordinary status for care by general medical practitioners and specialists exceeds the 25% threshold established by the Protocol. It emphasises, however, that as of 1 January 2008, the proportion of the registered Belgian population covered by compulsory insurance in respect of health care was 99.6%. The range of health care covered by compulsory insurance is very broad. The government's policy is to secure additional financial protection for the categories of insured persons who are at risk by reducing or removing their individual share in the cost of health care. By means of the measures adopted, the actual average share by the patient in the cost of all the care covered by compulsory insurance was 7.56% in 2006. The Committee of Ministers observes that the scope of application, the range of care and the general level of benefits broadly exceed the minimum standards established by the Code and the higher standards required by the Protocol. In view of the government's constant will to maintain compulsory insurance for the whole of the population offering a very broad range of care which does not result in hardship for beneficiaries, the Committee of Ministers will review the issue of the high rate of cost sharing by insured persons with ordinary status for care provided by general medical practitioners and specialists on the occasion of the government's next detailed report due in 2011;

II. concerning Part IV (Unemployment benefit), that government gave explanations concerning the application of Article 23 of the Code. With regard to the scheme of penalties in the unemployment insurance branch, the Committee of Ministers noted in its previous comments that unemployment allowances can be suspended for between one and 13 weeks where the unemployed person has made an inaccurate, incomplete or belated declaration or has omitted to make a required declaration and has received or may unduly receive allowances as a result; and from four to 26 weeks where the worker is deemed responsible for her or his dismissal, that is if she or he has personally committed the misconduct which gave rise to dismissal. The Committee of Ministers recalled that, in the cases referred to, Article 68.d and f of the Code authorises the suspension of the benefit only where the person concerned has attempted to obtain it fraudulently or has committed wilful misconduct. In reply, the government explains that the imposition of a penalty on the unemployed person requires the latter to have committed misconduct and the administration (ONEM) to provide proof of such misconduct. Where the unemployed person receives benefits unduly as a result of such misconduct, they are recouped. When the unemployed person receives benefits and there is no misconduct or the misconduct cannot be proven, there is no penalty. If the misconduct of the unemployed person is proven, the administration may take into account the circumstances as a basis for deciding not to impose the penalty or for imposing a heavier penalty (for example, in the event of repeated offences or manifest fraudulent intention). The unemployment regulations explicitly provide that the administration may confine itself to issuing a warning (section 157bis of the Royal Order of 25 November 1991 issuing the unemployment regulations). This is not a penalty and is not considered as proof of a violation. In addition to a warning, the director of the unemployment office may also opt for a fully or partially suspended penalty. In the case of a fully suspended penalty, this has no impact in practice on the receipt of unemployment benefit. In any event, the burden of proof lies with the director of the unemployment office, who is responsible for taking a decision in relation to the unemployed person, taking into account all the tangible facts. An appeal is always possible against this decision to the labour courts, which verify all the evidence, including compliance with the regulations, as well as European codes. The government emphasises that, at the time of dismissal, the unemployment

office assesses applications for benefit on a case-by-case basis and has to prove the misconduct and the unemployed person's intention: accordingly, where there is the slightest doubt, the penalty is not imposed.

The Committee of Ministers notes that the application of penalties is subject to the control of the courts and that the government does not perceive problems in practice. It recalls, however, that proof of the unemployed person's fraudulent intention is not required for the suspension of benefit, and that it is merely necessary to note an infringement. In view of the broad discretionary powers that are entrusted to unemployment offices for the assessment of the conduct of unemployed persons and the imposition of penalties, the Committee of Ministers considers that the latter could benefit from a reminder by the government of the European rules applicable to the scheme of penalties in unemployment insurance as envisaged by the Code;

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection; the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that law and practice in Belgium continue to give full effect to all accepted parts of the Code, as amended by the Protocol, subject to the following points concerning Parts II and IV;

Decides to invite the Government of Belgium:

I. concerning Part IV (Unemployment benefit), to consider whether it is appropriate to issue a circular addressed to the directors of unemployment offices drawing their attention to the provisions of Article 68.d and f of the Code;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Cyprus
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 15th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial

situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that law and practice in Cyprus continue to give full effect to all accepted parts of the Code;

Decides to invite the Government of Cyprus:

I. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by the Czech Republic
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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",
- 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 the Czech Republic submitted its sixth annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part VII (Family benefit), 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 Act No. 326/1999 Coll. on Foreigners' Residence in the Territory of the Czech Republic;

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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

Decides to invite the Government of the Czech Republic:

I. concerning Part VII (Family benefit), Article 43 of the Code, to explain whether the qualifying period of 365 days established for this category of foreign residents is compatible with Article 43 of the Code, under which the entitlement to family benefits is prescribed for classes of employees or the economically active population comprising the categories of the persons protected (Article 41) should be granted after six months of ordinary residence;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Denmark
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 35th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

- I. concerning Part XI (Standards to be complied with by periodical payments) of the Code, that,
 - a. the report states that while in accordance with the Code, benefits have traditionally been calculated on the basis of the average wages for male workers in the iron and steel manufacturing industry, this sector is no longer the sector that employs the largest number of men in Denmark. It seems inappropriate therefore to base the rate of benefits on earnings for this group. Nevertheless, no matter what sector is chosen, the rate of benefit will naturally be a summary figure that conceals considerable

variation across the workforce. A more appropriate and representative measure of earnings would be the lower quartile earnings for workers employed in enterprises that are members of the Confederation of Danish Employers (Dansk Arbejdsgiverforening), which in 2006 was approximately 269 000 Danish kroner (DKK) (basic pay only).

The Committee of Ministers thanks the government for having raised the question of determining the reference wage which should serve to assess the replacement level of benefits. It recalls that Article 65.6 gives three options to determine the wage of the skilled manual male employee by taking either the wage of a fitter or turner in the manufacture of machinery other than electrical machinery, by taking the wage equal to 125% of the average earnings of all employees, or by taking the wage of a person deemed typical of skilled labour who is selected from the industry employing the largest number of male workers in the country. By contrast, Article 66.4 provides for only two options to determine the reference wage of a person deemed typical of unskilled labour by selecting this person from the manufacture of machinery other than electrical machinery or from the industry employing the largest number of male workers. In its 33rd report, the Danish government determined the reference wage under Article 65 as the “annual wage of a skilled manual male employee in the iron and metal industry” (DKK 339 000 in 2005), and under Article 66 as the “annual wage of an ordinary adult male labourer in the iron and metal industry” (DKK 256 800), in line with the above requirements of the Code.

In its 35th report, the government states that the iron and metal industry is no longer the biggest employer of male workers in Denmark. It does not indicate, however, which industry should be selected in its place as employing the largest number of male workers in the country, in accordance with the specific provisions to this end contained in Article 65.7 or 66.5 of the Code. Instead of using one of the options foreseen by the Code, the government suggests determining the reference wage by taking the basic pay in the “lower quartile earnings for workers employed in enterprises that are members of the Confederation of Danish Employers”. It does not indicate, however, whether this reference wage should be used for the purpose of Article 65 or Article 66 of the Code. The Committee of Ministers understands that, by definition, the lower quartile earnings of enterprise workers reflect the lowest categories of wages in the economy and could therefore be used to determine the reference wage of an ordinary adult male labourer for the purpose of Article 66 of the Code. This assumption is supported by the fact that the amount of the basic pay in the lower quartile earnings (DKK 269 000 in 2006) is very close to the wage of an ordinary adult male labourer in the iron and metal industry (DKK 256 800 in 2005). In contrast, the lower quartile earnings of enterprise workers are much lower than the wage of a skilled manual male employee in the iron and metal industry (DKK 339 000 in 2005) deemed to be the reference wage under Article 65.6.a of the Code;

b. with regard to the question of which reference wage – that of a skilled worker or of an ordinary labourer – should be used for the calculation of the replacement level of the Danish sickness, maternity and unemployment benefits, one should keep in mind that the reference wage of a skilled worker is normally used to assess earnings-related benefits, while the wage of an ordinary labourer is used to assess flat-rate benefits. The government rightly points out in this respect that a flat-rate system would pay all benefit recipients a fixed amount regardless of previous income in contrast to the current system where sickness, maternity and unemployment benefits are calculated on the basis of earnings. It observes, however, that it may be argued that the current system is effectively a flat-rate system, since 82.5% of unemployment benefit recipients received the maximum amount of benefits in 2006 (the same is true of sickness and maternity benefits). The government therefore proceeds to calculate the replacement rate of the unemployment benefit as a percentage of the basic pay taken from the lower quartile annual

earnings, as given in the earnings statistics produced by the Confederation of Danish Employers. The Committee of Ministers understands that the government henceforth wishes the rate of its sickness, maternity and unemployment benefits to be assessed under Article 66 of the Code by equating them to the flat-rate benefit system. The Committee of Ministers observes in this respect, as it did in its previous resolutions, that the Danish system indeed combines features both of the earnings-related and the flat-rate benefit systems. The key requirement of the Code with regard to the flat-rate system consists in that the minimum rate of the benefit should in all cases not be less than the level of 45% of the reference wage determined under Article 66;

c. The Committee of Ministers further notes that the government has used the new method for calculating the replacement rate of these benefits, in particular by inflating the unemployment benefit in order to take into account that it is exempt from labour market contributions, which amount to 8% of gross earnings. The government points out that, in order to secure comparability with conditions in other countries, a number of other elements of earnings used in the calculations in the Danish system need similar correction to take account of tax exemptions or other factors. According to the government, “addressing this need requires careful consideration, as well as consensus about which factors the rate of benefit must reflect”. The Committee of Ministers shares the concerns expressed by the government and observes that the method of calculation becomes particularly important when there is uncertainty as to whether the actual level of the benefits would attain the minimum level prescribed by the Code. In the opinion of the Committee of Ministers, the new method of calculation used by the government raises a number of important, but highly technical questions, such as whether it is appropriate to make calculations on a yearly, instead of a monthly, basis; whether calculations should be made on the basis of gross or net figures, thus, in terms of the report, inflating or deflating different elements of earnings; whether the reference wage was determined on the basis of total earnings, instead of the basic pay only; whether the maximum limit (DKK 3 415 weekly in 2007) was taken into account in the inflated amount of the unemployment benefit used in the new calculations (DKK 192 000 per year in 2007), etc.;

II. concerning Part XII (Common provisions), Article 68, that the Committee of Ministers has taken due note of the explanations provided by the government in reply to questions raised in the Committee of Ministers’ previous resolutions;

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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):

a. to consider the reference wage under Article 66 of the Code on the basis of the lower quartile earnings of workers employed in enterprises that are members of the Confederation of Danish Employers. In this case, the Committee of Ministers wishes to point out that in determining the amount of the reference wage under Article 66 of the Code, account should be taken not only of the “basic pay” received by the standard beneficiary, but equally of the normal supplements, increments, fringe benefits, etc. (e.g. 13th month of salary, holiday allowance, etc.), which are covered by the definition of “earnings” in the national legislation and together constitute “the total of the wage of an ordinary adult male labourer” (Article 66.1). The Committee of Ministers hopes that these considerations will help the government to specify in its next report what options it will choose to determine the reference wage under Articles 65 and 66 of the Code, as well as to refine the methodology used;

b. to show, on the basis of the appropriate statistics, that the minimum unemployment benefit paid to the standard beneficiary from among the 17.5% of the beneficiaries, who are not entitled to the maximum unemployment benefit, would in fact attain the level prescribed by the Code;

c. to settle the questions related to the method of calculation of periodical payments through direct contacts between the national specialists and the experts of the Council of Europe and the ILO;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Estonia
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 third annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

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 benefits for temporary incapacity for work if a doctor establishes that the illness or injury was caused by intoxication by alcohol, drugs or toxic substances. Taking into account 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 government states that it intends to bring national legislation into line with the requirements of the Code and the decision of the Supreme Court on the same subject;

II. concerning Part IV (Unemployment benefit), Article 68.e and 68.f, that according to section 6.2.2 of the Unemployment Insurance Act, the right to unemployment benefit is withheld in case the employment was terminated due to a breach of duties of employment or service, loss of confidence, an indecent act or an act of corruption. The report states that termination of employment in such cases is applied as a measure of disciplinary punishment pursuant to the Employees Disciplinary Punishments Act. The Committee of Ministers understands that an employee who has committed these disciplinary offences is subjected in Estonia to double punishment: first, by having the employment contract terminated under the labour law, and second, by being deprived of the unemployment benefit under the social security law. The Committee of Ministers observes that Article 68 of the Code aims at preventing precisely such situations of double punishment, where the suspension of the social security benefit comes in continuation of a sanction already imposed under other legislation. It does so by disallowing the suspension of social security benefits as a means of inflicting punishment for offences which are not expressly recognised by this Article. With regard to the disciplinary offences committed by the persons protected, Article 68.f of the Code allows suspension of unemployment benefit only when dismissal resulted from the wilful misconduct of the person concerned. This principle draws an important distinction between the much broader concept of “misconduct” which may be sanctioned under the labour law, including by dismissal, and those elements of misconduct which may entail sanctions under the social security law, so as not to unduly deprive the person dismissed through his non-wilful misconduct of protection guaranteed by the social security scheme in such cases;

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 section 46.1 and 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 VIII (Maternity benefit), Articles 49 and 52, that Article 52 of the Code requires prenatal medical care to be provided to protected women free of charge from the moment the pregnancy is medically determined, whereas in Estonia they are entitled to medical care starting only from the 12th week of pregnancy (section 5.4.1 of the Health Insurance Act). In this respect, the Committee of Ministers welcomes the government’s intention to upgrade the national provision to the level of protection required by the Code;

V. concerning Part X (Survivors’ benefit), Article 60.1, that according to section 20 of the State Pension Insurance Act, the widow has the right to receive survivors’ pension upon the death of a breadwinner if she is pregnant (from the 12th week of pregnancy) and not working; if she is permanently incapacitated for work or of pensionable age; or if she is not employed and is raising the breadwinner’s child who is under 3 years of age. The widow’s right to survivors’ pension corresponds to the spouse’s duty of support provided in the Family Law Act. According to sections 22 and 23 of this act, a husband is

required to support 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;

VI. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that the law and practice in Estonia give full effect to Parts II, V, VII and IX of the Code and that they also apply Parts III, IV, VIII and X of the Code, subject to taking legislative measures on the following points concerning Parts III and VIII;

Decides to invite the Government of Estonia:

I. concerning Part III (Sickness benefit), Article 14, in relation to Article 68.f, to indicate in its next report, the progress made to bring national legislation into line with the requirements of the Code and the decision of the Supreme Court;

II. concerning Part IV (Unemployment benefit), to consider how the principle of Article 68.f of the Code that allows suspension of unemployment benefit only when dismissal resulted from the wilful misconduct of the person concerned, could best be reflected in the national social security legislation, including the Unemployment Insurance Act;

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

a. Article 28.a, that in view of the fact that calculations of the level of the pension in all government reports are made according to the first formula (base amount plus length of service component for 30 years of service), to indicate whether the old-age pension of the person retiring in 2007 after 30 years of service should be calculated for the 21 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 further notes that the government’s calculations of the pension of a standard beneficiary (man with wife of pensionable age) include the amount of the national pension paid in respect of the wife of the beneficiary (1 423 Estonian krooni (EEK) in 2007). It would therefore like the government to confirm that the dependent wife of the beneficiary of the old-age pension will be granted the national pension if she has attained 63 years of age and has 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 X (Survivors' benefit), Article 60.1, that since the Code permits 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 no chance of finding employment after being supported by her husband for many years, as well as to a younger widow who was also supported by her late husband and is caring for at least one dependent child older than 3 years of age;

V. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by France
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 21st annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part II (Medical care), that in the Committee of Ministers' previous resolution, the government was invited to describe its new policy for health insurance, specifying the measures taken to reduce the deficit in the branch, ensure that the system is sustainable in the long term and that high-quality services are in practice available for all. The government indicates in its reply that Act No. 2007-1786 on social security financing for 2008 of 19 December 2007 introduced deductibles from the reimbursement of certain products and health care for basic health insurance schemes, called "medical deductibles". These new deductibles, which are in addition to existing cost sharing and flat rate

reimbursements, apply to all persons, except for children, pregnant women and persons with low means. Their amount is a flat rate (€0.50 for each box of medicine and each paramedical act, and €2 for health-related transport) and they are applicable up to an annual ceiling of €50 per person. The new contributions introduced by the act also include a contribution by employers (10%) and employees (2.5%) on awards of stock options allocated to the financing of the health insurance scheme, the extension into 2008 of the exceptional rate for contributions by pharmaceutical enterprises based on their turnover and the extension of the Social Solidarity Contribution on public law associations operating in a competitive context. The government also reports a bill for the establishment of regional health agencies which will group together the services of the state and certain health insurance personnel for the unified management of the out-patient, hospital and socio-medical sectors.

II. concerning Part V (Old-age benefit), that in reply to the Committee of Ministers' request, the report contains the calculation of the replacement rate of the old-age pension for a standard beneficiary of 65 years of age with 120 quarters (30 years) of contributions in 2004, without children and with a spouse of pensionable age having no individual entitlements. The percentage of the amount of the pension in relation to the average wage determined in accordance with Article 65 of the Code is 39.50% for a pension paid in 2004, which is below the 40% prescribed by the Code. The same calculation for the pension paid in 2008 would lower this percentage to 37.50%. The government, however, explains that these are very simplified methods of calculation and are confined to the basic retirement scheme. It therefore provides a more elaborate calculation which takes into account both wage and contribution fluctuations over the years of work taken into consideration and the two elements which constitute the compulsory retirement benefit for employed persons in France: the basic scheme and, for non-managerial employed persons, the supplementary ARRCO pay-as-you-go scheme. The calculation is made for a standard beneficiary who has completed 120 quarters of insurance and employment at the minimum wage (SMIC) in 2008. The replacement rate of the gross pension in relation to the last gross wage (€1 267 in 2008) is 56% and therefore exceeds the minimum rate required by the Code.

The Committee of Ministers notes that, in selecting the method of calculation of the replacement rate envisaged in Article 28.a of the Code, the government indicates that the old-age pension continues to be covered by Article 65 of the Code and consequently takes as the reference wage for its calculation the gross monthly wage of a skilled manual male employee in the metal and metallurgy sector (€2 000 in 2004). However, where this calculation gives a replacement rate that is lower than the 40% determined by the Code, the government undertakes a more elaborate calculation in which the wage of the skilled manual employee is replaced by the minimum wage (SMIC). The Committee of Ministers is bound to note that the SMIC cannot be used as a reference wage under the terms of Article 65 of the Code. If, however, the government intends to make use of the method of calculation envisaged in Article 66 of the Code, it has to demonstrate that the SMIC is equal to the wage of an ordinary adult male labourer and that the amount of the minimum old-age pension provided to persons protected in France is in no event lower than 40% of the SMIC. Finally, to be able to take into account the supplementary ARRCO pay-as-you-go scheme, it is necessary to demonstrate that this scheme covers at least 50% of all employees, in accordance with Article 27.a of the Code.

III. concerning the governance and financing of social security during periods of crisis, that according to the government's report for the period ending 30 June 2008, the social security deficit has continued to decrease. The improvement of the financial situation of the social security system remains a priority for the government, which has set as its objective a return to financial equilibrium for the general scheme by 2011. Its strategy is based on new measures to contain costs, more secure resources and greater control

over exemptions and *niches sociales*, the continued clarification of the financial relationship between the state and the social security system and the reimbursement of earlier social security deficits by 2021. The Bill on finance and the financing of social security which will be submitted to Parliament in the autumn of 2008 will include measures in this respect. In the meantime, several additional measures have been taken in the context of the Act on social security financing for 2008, which introduced new sources of revenue, adapted various measures relating to exemptions from social contributions and abolished all measures granting total exemptions from contributions in relation to employment injury insurance.

The Committee of Ministers considers that the return to the annual equilibrium of social financing must constitute a priority for the public authorities. It nevertheless understands that the task of stabilising the financial situation of the social security system, which is incumbent upon the government, is liable to become a greater burden in view of the current crisis in the global financial system which may endanger social security assets. The Committee of Ministers notes with concern that, according to the indications provided to the press in October 2008 by the directors of the Pension Reserve Fund in France, since the beginning of the year the fund's global assets have lost 11% of their value, or €3.8 billion. In the current situation, the Committee of Ministers believes it important to emphasise that, while it is true that the provisions of the Code were not designed for the management of social security in a crisis situation, they nevertheless establish parameters to ensure the stability and sound governance of the system. A sound management policy in periods of crisis would therefore consist in bearing these parameters in mind to allow the progressive return of the system to its normal condition, even though emergency measures may temporarily introduce significant adjustments into these parameters. The role of the European Code of Social Security therefore takes on particular importance with a view to ensuring the concerted recovery from the crisis of European countries by obliging them all to bring their social security systems back to the initial parameters.

The Committee of Ministers also wishes to emphasise in this respect that during periods of crisis no Contracting Party can discharge its general responsibility under Article 70.3 of the Code for the maintenance of financial equilibrium and to safeguard the viability of the social security system without, at the same time, being committed to the obligation to achieve time-bound results. It is with the aim of achieving the desired result within the determined time limits that this provision of the Code places each Contracting Party under the obligation to "take all measures required", including emergency measures dictated by the crisis. The Committee of Ministers notes in this context that at the operational level, through the introduction since 1996 of the management of the social security system in the context of the annual act on the financing of social security, the French Government has progressively adopted one of the most significant arsenals of financial instruments and regulations in Europe. The experience acquired by the government in the close financial management of social security affords it comparative advantages to ensure wise governance in these perilous times for both the financial system and the social security system, by maintaining the latter within the parameters envisaged by the Code. The Committee of Ministers trusts that, despite the financial crisis, the government will be in a position to specify in its next report, with reference to the relevant texts, the time-bound commitments and revised schedules that it has determined or intends to determine for:

- a. re-establishing the financial equilibrium of the social security system;
- b. stopping the continued growth of the public debt in relation to social security;
- c. paying off former debts contracted by the state;

- d. 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
- e. introducing governance rules to clarify the financial relations between the social security system and the state and to prevent debts from being renewed in future.

IV. concerning the control and inspection in relation to social security, that in reply to the Committee of Ministers' request, the government's report contains detailed explanations of French policy to control and combat social fraud, in the context of which action is envisaged in relation to all of the actors in the social security system. With regard to enterprises and employers, the priority actions introduced include the monitoring of the secondment of employees, of mechanisms for the evasion of social contributions, of exemption measures, the reduction and re-evaluation of income subject to contributions, but in particular to combat hidden employment. Insured persons are subject to greater controls relating to the conditions for the granting of benefits (income from work and personal means, household resources, dependent persons and children, stable and lawful residence, etc.), while health professionals are controlled in relation to the conditions for the application of rules respecting fees for medical acts and procedures for the prescription of medicines. All of these measures are intended to establish in each branch of social security a real culture of supervision based on a renewed legal framework covering:

- the strengthening of the powers of controllers of social security institutions to improve the conditions under which they monitor financial records and means through the procedure for assessing elements of living standards and benefits provided outside France;
- the development of procedures for the exchange of data and information among social institutions and between these institutions and the fiscal and judicial authorities;
- the achievement of greater awareness by enterprises to dissuade them from committing fraud or abuse in relation to their social security declarations and the payment of contributions (particularly through the application of a flat-rate penalty procedure equivalent to six times of the amount of the minimum wage for employers who hide or reduce the contributions to be paid and through a procedure against those who challenge the obligation of affiliation to the social security system); and
- the improvement of awareness among beneficiaries and health professionals and providers through the effective application of penalties in cases of proven fraud as envisaged in the Social Security Code.

Decree No. 2008-371 of 18 April 2008 created new structures entrusted with co-ordinating policy to combat both social security and fiscal fraud. Accordingly, the National Commission to Combat Fraud, the political body which gathers together the ministers concerned, defines the objectives of the policy to combat fraud. The National Delegation to Combat Fraud, an administrative body, co-ordinates the action taken between the competent state services, on the one hand, and between these services and social security institutions, on the other. It contributes to the effective collection of public income from contributions and the payment of social benefits, and the prevention of any fraud or abuse by beneficiaries. It guides the work of operational committees to combat illegal work and of the local committees which co-ordinate all joint action at the local level undertaken by the administrative services responsible for combating fraud. At the level of social security institutions, a coherent and identifiable

administrative network has been established with the creation of a fraud department for each branch of social security and the appointment of local focal points to share good practices and knowledge.

The Committee of Ministers observes that the new French policy to control and combat social security fraud lies within a general trend that has emerged over recent years in several European countries consisting, on the one hand, of equipping social security systems with their own inspection and punishment mechanisms and, on the other, of ensuring close collaboration between these mechanisms and other public services entrusted with supervision and enforcement, such as the fiscal services, the labour inspectorate, services to control the residence of foreign nationals and migration, etc. The legal, administrative and operational means deployed in France for the implementation of this policy are unparalleled in Europe. The extent and systematic nature of the measures adopted allow the coverage of all the persons concerned throughout the national territory, at all administrative levels and in all branches of social security. The Committee of Ministers sees them as new elements in the French response to the increasingly complex problem of the management of a social security system that is replete with many *niches sociales*, social exemptions and reductions, and other subsidies, privileges and inequalities. It shares the government's opinion that, while fraud is committed by only a minority of actors and beneficiaries and its suppression will not, in itself, resolve the imbalance of social security finances, it is nevertheless a reality that must not be denied, as it has a real financial impact.

V. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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 Part II (Medical care), to provide further particulars in its next report on the tangible results of these measures in terms of the financial recovery and unified management of the system;

II. concerning Part V, to provide in its next report the updated calculation of the old-age pension so as to demonstrate that the replacement rate envisaged by the Code is still achieved;

III. concerning control and inspection in relation to social security, in view of the concern to resolve the imbalance in social security financing, in accordance with Article 70.3 of the Code, to specify in its next report whether estimates and actuarial calculations have been made of the financial impact of fraud on the social security system and to compare them to the cost of operating the new structures responsible for combating fraud. It is further requested to indicate the proportion of these costs that are borne by the general social security scheme in relation to the potential financial benefit that may accrue to it as a result of the measures for the collection of contributions carried out by these structures. With a view to preventing significant resources being withdrawn from the social security system to cover public policies pursuing other objectives, the Committee of Ministers invites the government to provide a transparent picture of the additional administrative costs arising out of its policy to combat social security fraud for the general social security scheme and to specify the role that the representatives of the persons protected, and particularly trade unions, will be called upon to play in the implementation of this policy, in accordance with Article 71.1. of the Code;

IV. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Germany
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 37th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

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

a. that the report states that, at the end of 2006, around 17.3 million employees with compulsory social insurance coverage had occupational pension rights. To this add another 11.1 million private *Riester* pension contracts for supplementary retirement provision (position as of first quarter 2008). In both systems the fund management is subject to state supervision which is carried out by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) based in Bonn. The resulting pension entitlements are payable in parallel with the pensions from the statutory pension insurance. Assuming an insurance record of 30 years, the ratio of the net old-age pension, including a pension from a private retirement savings plan, to the net earnings of a worker with 125% of average income is 71.7% in western Germany and 68.9% in eastern Germany, and thus higher than the replacement level of 45% required by the Protocol.

The Committee of Ministers recalls that in application of Article 27.a of the Code, as amended by the Protocol, Germany has accepted the obligation to ensure an old-age pension at the level of 45% of previous wage to prescribed classes of employees, constituting not less than 80% of all employees. The statistical data provided in the 35th report showed that in 2005, the total number of employees in Germany amounted to 34 277 000, of which 96.7% were covered by pension insurance. The 36th report stated that in 2007 about 65% of all employees subject to social insurance had occupational pension rights.

With regard to the private *Riester* pension, the Committee of Ministers notes that in the 36th report it was calculated on the basis of the real interest rate of 3%, whereas in the present report the rate taken is 4%;

b. that in its previous resolutions, the Committee of Ministers asked the government to continue to supply statistics on the effective adjustment of pensions to changes in the general level of earnings and the cost of living. The government indicates that in 2007 the adjustment of the pension value (0.27%) lagged behind the increase in wages (0.95%) and in consumer prices (2.26%). To reflect the actual revenues of the statutory pension insurance, the wage trends identified for the purpose of determining the pension adjustment rates also include, from 2006 onwards, the trends in the earned income liable to contributions. To make sure that the costs of demographic change are equally shared between the generations, pension adjustments take two additional influences into account. First, changes in the expenses of employees for the statutory pension insurance and their private retirement provision are taken into account in the pension adjustment process. The increased expenses for private retirement provision had reduced the 2007 pension adjustment by 0.63%. Secondly, the sustainability factor introduced in 2005 ensures that the development of the correlation between those who draw pensions and those liable to pay contributions is reflected in the adjustment of pensions. A decrease in the number of contributors tends to lead to lower adjustment rates, whereas an increase in contributors would have a positive adjustment effect. The sustainability factor spreads out the impact of the increased life expectancy and the birth and employment trends on the financing of the statutory pension insurance to pensioners as well. In 2007, the effects of the reforms of the last years, which had produced economic growth and increased employment, began to unfold. As a result of the positive development, the sustainability factor had the effect of increasing the 2007 adjustment rate by almost 0.2%.

The Committee of Ministers observes that the German pension adjustment formula is based on complex economic and demographic factors, which are not directly related to the changes in consumer prices and in the cost of living and which expose pension value to negative as well as to positive adjustment. If positive adjustment of pensions may be expected during the period of economic prosperity and full employment, the onset of economic recession would in all probability lead to their negative adjustment and the reduction of pension value. The resulting loss of the purchasing power of pensions would be

much greater if the recession were accompanied by an increase in inflation rates. Such a scenario could be particularly damaging during the period of economic crisis, as it would sharply decrease effective demand and further aggravate the economic downturn;

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that the law and practice in Germany continue to give full effect to all accepted parts of the Code and the Protocol, subject to updated calculation of the replacement rate of the old-age pension;

Decides to invite the Government of Germany:

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

a. to include in its next report updated statistics requested in the report form on the Code under Title I of Article 74 on the number of employees covered by the occupational pension scheme and by the private pension scheme in relation to the total number of employees in the country, as well as on the number of employees that remain covered only by the statutory pension insurance scheme. It is further requested to calculate the replacement rate of the final pension obtained by the standard beneficiary taken from each of the three categories of pension coverage mentioned above. Taking into account that, according to the report, 56.4% of first-time pension recipients with less than 35 years of insurance are women, the Committee of Ministers would also like the government to provide the same calculations for the beneficiary (a woman) specified in Title V under Article 65 in the report form on the Code;

b. to include in its next report statistics on the real interest rate applied to the *Riester* private pension during the whole period from the time it was first introduced in January 2002. It would be grateful if the government would also assess the impact on the private pension scheme of the current global financial crisis;

c. to indicate what measures it has taken or intends to take in order to maintain the purchasing power of pensions vis-à-vis inflation in the period of economic downturn which European countries are currently facing;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information

on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Greece
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 26th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part VI (Employment injury benefit) of the Code, Article 36.2, that in its previous resolutions the Committee of Ministers insisted on the need to re-establish in the Greek legislation the right to long-term benefits at a reduced rate for victims of employment injury with incapacity of less than 50%. The Committee of Ministers notes from the government's report that, following the technical consultations in June 2008 between the General Secretariat of Social Security, IKA-ETAM and the experts of the Council of Europe and the ILO, Greece has decided to introduce appropriate legislative changes in order to give effect to Article 36.2 of the Code;

II. concerning Part XI (Standards to be complied with by periodical payments): the Committee of Ministers thanks the government for providing explanations and statistical tables on the estimated daily income of the 28 insurance classes into which insured persons are classified for the purpose of calculating the amount of their social security benefits. With regard more particularly to the sickness benefit, the report states that its amount is equal to 50% of the estimated daily income of the insurance class to which the beneficiary belongs, increased by 10% for each dependent family member. However, the maximum sickness benefit cannot be higher than the estimated daily income of the 8th insurance class (€29.39 in 2008) or 70% of the daily income of the insurance class in respect of which the sickness benefit is calculated. According to these rules, the amount of the sickness benefit for the standard beneficiary for this branch of the Code (a man with wife and two children) would represent 70% of the daily income of the insurance class to which he belongs, but not more than the maximum amount of €29.39. According to Article 65.3 of the Code, this maximum limit should be fixed in such a way that it would allow the sickness benefit to attain at least 45% of the previous earnings of the beneficiary earning the reference wage (that of a skilled manual male employee). The Committee of Ministers notes that the maximum sickness benefit of €29.39 would represent 45% of the estimated daily income of the 19th insurance class (€64.42), but would fall below this level for the beneficiaries belonging to insurance classes 20 to 28.

Furthermore, the report states that for the first 15 days of sickness, the maximum amount of sickness benefit is limited to the estimated daily income of the 3rd insurance class or to 35% of the daily income of the insurance class in respect of which the sickness benefit is calculated, which is lower than the 45% required by the Code. However, in its 25th annual report the government stated that the difference between the maximum sickness benefit and the insured person's wage during the first 15 days of sickness is paid by the employer;

III. concerning governance and organisation of social security, the report refers to the new law (l. 3655/2008), which introduced a major organisational reform of the social security system in Greece by integrating the previously existing 133 institutions, branches and funds, over which the General Secretariat of Social Security had authority, into only 13. These new social security institutions will have unified management with the participation of representatives of integrated professional branches. None of the current benefits are being lost, given that the terms, conditions and amounts are not changed and the reserve funds of the different institutions are not combined.

IV. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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, to adopt in the near future the appropriate legislative changes in order to give effect to Article 36.2 of the Code and to indicate progress in its next report;

II. concerning Part XI (Standards to be complied with by periodical payments),

a. to indicate the types of employment covered by the 19th insurance class, as well as the insurance class to which a fitter or turner in the manufacture of machinery would belong, and to indicate also the amount of average earnings in the private sector in 2008.

b. to confirm that the difference between the maximum sickness benefit and the insured person's wage during the first 15 days of sickness is paid by the employer, by reference to the corresponding provisions of the legislation;

III. concerning governance and organisation of social security, in order to better understand the new structure of the social security system in Greece, to furnish detailed information on the types of benefits provided by each of the new social security institutions and on the number and categories of the persons covered;

IV. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Ireland
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 35th annual report on the application of the Code for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part IV (Unemployment benefit) of the Code in relation to Article 68.f, that in its previous resolutions, the Committee of Ministers advised the government to consider including in the guidelines for the deciding officers on the application of disqualifications for unemployment benefit a reference to the general principle established in Article 68.f of 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. The Committee of Ministers notes with satisfaction that, in response to this request, on 11 April 2008 the Department of Social and Family Affairs issued a circular to the relevant officers drawing attention to the amendment made in the guidelines for the deciding officers, the purpose of which is to ensure that in a situation where a person loses a job through misconduct, he or

she would not suffer a further penalty of disqualification for receiving a jobseeker's payment where the conduct, though blameable and giving sufficient grounds for dismissal, was not wilful;

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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, concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Italy
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on2009
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 23rd annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning the administration and organisation of social security that, according to the report, the policy respecting the organisation of the National Social Security Institute (INPS) is intended to reinforce its presence on the territory through the decentralisation policy and synergies with other institutions active on the territory. The consolidation of services in the field, particularly through the availability of a single counter, is henceforth an inevitable requirement from an operational point of view. In this context, the synergies established between the fields involved have become indispensable and for the Institute represent a crucial and strategic management tool. The exponential technological development over recent years has radically modified the channels for the exchange of information in the citizens–enterprises–intermediaries–INPS nexus with the increased use of online services. The INPS is one of the central pillars of electronic administration in Italy. With a view to compiling data, carrying out calculations and transmitting them through very rapid connections, the INPS has a major computerised system with a

capacity for the calculation of 12 billion instructions per second, with 372 central servers and 193 peripheral servers. Its centralisation system is capable of performing over 8 million transactions per day, and is connected to all the workstations in the 20 regional directorates, 154 provincial and sub-provincial directorates, 343 territorial agencies, 1 000 client service points of the institute, over 8 000 communal authorities, 14 000 post offices, banks, the ENEL, chambers of commerce, professional associations, consulates, labour councils, regions and other public administrations, such as the INAIL, INPDAP and the Ministry of the Economy and Finance. At the same time, the development of computerised operations with their multiple applications give rise to significant security problems, which are particularly delicate for an institute that compiles sensitive data. In this context, Legislative Decree No. 196 of 30 June 2003 issuing the Code for the Protection of Personal Data contains systematic regulations covering all issues relating to the protection of personal data. These texts represent a first model for the codification of provisions relating to the protection of data in Europe at Community level (Directives Nos. 95/46/EC and 2002/58/EC) and in international regulations. In accordance with these provisions, the INPS adopted a new organisational system for data privacy, which envisages the establishment of a body responsible for the co-ordination of data privacy and the appointment of members of staff responsible for the processing of such data.

The Committee of Ministers observes that the issues relating to the governance and administration of social security raised in the report of the Italian Government are common to all states which have introduced the computerised management of their social security systems. Strengthening the effectiveness of the government's administration in the field of social security and its very capacity to manage the legislative system that has become overly complex are conditional upon the optimal use of the potential offered by new information and communication technologies, including the Internet. In view of these developments, the general responsibility of the state for the proper administration of social security institutions and services, while increasing in breadth, is also growing through the addition of a new dimension. Among the new responsibilities facing the managers of social security schemes are the need to ensure the institutional and operational integration of social security with other state systems, online operation, the security of information networks and the confidentiality of data. In these circumstances, the reliability, precision and safeguarding of the data used by the system are becoming key factors. The Committee of Ministers notes the substantial progress achieved in Italy in these fields over recent years, particularly in relation to data privacy;

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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 the administration and organisation of social security, to describe its experience in its next report in relation to the prevention of the risk of breakdowns in information systems and the eventual loss of data, which could paralyse the INPS system, and to indicate the appeal procedures available to challenge the electronic data used by the system, conduct an investigation in cases of information errors and, where appropriate, compensate the insured person concerned;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Luxembourg
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 40th annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

- I. concerning Part III (Sickness Benefit):

a. Article 18 of the Code, as amended by the Protocol: in its previous resolutions the Committee of Ministers observed that the new rule for the calculation of periods of incapacity for work adopted by the Act of 21 December 2004 on incapacity for work and vocational rehabilitation, which limits the total duration of sickness benefit to 52 weeks during a reference period of 104 weeks, appears to be less favourable than the options envisaged by Article 18 of the Code, which allows a limit of 52 weeks in each case of sickness, or of 78 weeks during a period of three consecutive years. The Committee of Ministers notes with satisfaction that, after a careful examination of the problem, the government introduced a legislative amendment allowing the maximum duration of benefit and of the reference period to be adapted in specific situations where this is so required. The act introducing a single status for employed persons in the private sector, which entered into force on 1 January 2009, envisages a flexible procedure under which the social partners who are members of the Administrative Board of the National Health Fund may react to cases of necessity through an appropriate provision in the statutes defining specific situations in which the limit and the reference period shall be adapted;

b. The report indicates that the Act of 13 May 2008 introducing a single status for employed persons in the private sector has resulted in a new distribution of responsibilities between employers and the social security system in relation to sickness benefit. As from the entry into force of the act on 1 January 2009, an employed person who is incapable of working is entitled to the maintenance of the whole wage and other benefits arising out of the employment contract until the end of the month in which the 77th day of incapacity for work elapses during a reference period of 12 months. With a view to offsetting the surcharge represented by the increase in the responsibility of employers, compensatory measures are envisaged, including the establishment of an employers' mutual fund to cover the risks incurred by enterprises due to the generalised maintenance of wages. Its mission is confined to reimbursing employers the expenditure that they have to bear in this respect during the period covered by the employers' obligation. The rate of contributions to the employers' mutual fund may vary in accordance with the category of risk envisaged, the duration or level of benefits. Affiliation is compulsory for all enterprises, except those which have taken out contracts prior to 31 December 2008 with private insurance institutions against the same risks. The management of the employers' mutual fund is the responsibility of an administrative board on which the state will be represented by the Presidents of the National Health Fund and the Common Social Security Centre. The state will make available to the employers' mutual fund an initial rolling fund and will provide a contribution corresponding to 0.3% of the wage mass subject to contributions of persons subject to compulsory insurance as from the 2014 budget. It has been decided to proceed on an annual basis and, for the first time in 2010, an intermediary assessment will be made of the general maintenance of wage levels. If, on the basis of this assessment, it is seen that the burden on the economy as a whole has increased, the state contribution may be reviewed by the Budget Act.

The Committee of Ministers observes that the Act of 13 May 2008 introduces a general transfer of obligations in the event of sickness of employed persons in the private sector from social insurance to enterprises and the substitution of sickness benefit by the maintenance of wages by the employer during an average of 13 weeks. In view of this change, which now places Luxembourg alongside certain other European countries which have opted for the partial privatisation of the sickness benefit scheme, the Committee of Ministers is bound to recall that the emergence of such mixed social security schemes gives rise to new problems of governance, regulation and control of the system by the state, the democratic participation of the persons protected in its management, the redistribution of the risk, the financial burden and responsibility in society, as well as non-discrimination and solidarity with the most vulnerable groups.

It shares the government's view that the introduction of the single status and the related changes offer a propitious occasion for an in-depth review of social insurance.

II. concerning governance and organisation of social security: as a consequence of the introduction of a single status for all employed persons, the Act of 13 May 2003 also restructured the organisation of the social security system, hitherto based on socio-occupational distinctions, by merging the various private sector sickness and pension funds. The administrative reorganisation of the social security system will lead to the establishment of a National Health Fund (CNS) and a National Pension Insurance Fund (CNAP). The CNS, which will bring together the current Union of Sickness Funds, the sickness funds for private sector employees and the sickness funds for workers other than employees, will be entrusted with general competence for sickness and maternity insurance and dependency insurance. The local agencies of the Wage Earners' Sickness Fund that are currently operational will be maintained as "single multifunctional counters" in the Common Social Security Centre. The CNAP, composed of the four pension funds of the general scheme, will also administer the compensation fund, established as a separate legal entity. The government's model for the various social security bodies envisages joint participation by the social partners and a representative of the state as president of a steering committee. The institutional reform of social security has multiple objectives: the introduction of single counters so as to facilitate the access of insured persons to social security services; the establishment of effective control over management; the improvement of the management of procedures within the various bodies and communication between the latter and the Social Security Information Centre (CISS). A key role in this development, focusing on insured persons, will be entrusted to the Common Social Security Centre which, as the centralising body of social security information operations, will collaborate closely with the methodological units of the various bodies.

The Committee of Ministers observes that the structural reforms undertaken in Luxembourg are following the same path of the consolidation and centralisation of social security institutions that has been selected by most other European countries. This trend towards the integration of the social security system appears to be still more advanced in the case, such as in Luxembourg, that the system is provided with a centralising body in the fields of methodology, technology and information management, directly accessible to insured persons through the network of single multifunctional counters;

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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

Decides to invite the Government of Luxembourg:

I. concerning Part III (Sickness Benefit):

a. Article 18 of the Code, as amended by the Protocol, to draw the attention of the Administrative Board of the National Health Fund to the issue of the application of Article 18 of the Code and to inform the Committee of Ministers in due time of any modifications made to the statutes in this respect;

b. to express its point of view on the above issues in future annual reports. In the meantime, in view of the surcharge that this reform will represent for private employers, the Committee of Ministers hopes that the competent government services will be alerted to follow labour market developments and, if necessary, strengthen the protection for workers who have a history of medical problems against discrimination in access to employment and the selection of personnel in relation to the private insurance taken out by the employer to cover the financial risks arising out of the sickness of personnel. The government is also requested to provide detailed information on the role played by the representatives of the persons protected in the newly established institutions – the employers' mutual fund and private insurances, taking into account Article 71.1 of the Code. As the impact of the partial privatisation of the sickness benefit scheme on the economy as a whole is not known, the Committee of Ministers draws the government's attention to its general responsibility for the financial viability and proper administration of the scheme, in accordance with Articles 70.3 and 71.2 of the Code. From this viewpoint, it would be grateful if the government would demonstrate, depending on the availability of relevant statistical data, the advantages in terms of financing, effectiveness and the reduction of absenteeism due to sickness that are secured for Luxembourg society through the replacement for 13 weeks of sick leave of the benefits system based on the principle of solidarity by the system based on the direct responsibility of employers and their reinsurance. It also requests that the government compare, for example, the total cost of the contributions paid by the employers to the mutual fund and to private insurance companies with the total amount of contributions that employers would otherwise have had to pay to the social security scheme to cover the same risks;

II. concerning governance and organisation of social security, to indicate the control mechanisms that have been established to ensure that the gains in terms of financing and effectiveness resulting from this reform are not absorbed by the administrative costs of the system, but in practice serve to improve the quality and quantity of benefits provided to insured persons;

III. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by the Netherlands
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 41st annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part IV (Unemployment benefit) in conjunction with Article 68.f. under Article 68.f of the Code, sanctions in respect of claimants of unemployment benefit who are deemed to be "culpably unemployed" may apply only in cases where unemployment has been caused by the wilful misconduct of

the person concerned. According to Article 24.2 of the Unemployment Insurance Act, an employee is considered to be culpably unemployed when the unemployment occurred due to compelling reasons mentioned in Article 678 of Book 7 of the Civil Code and the employee is to blame for becoming unemployed. Among such compelling reasons, Article 678.k and l mention cases where the employee “neglects his duties in a flagrant way” or “is not able to perform his duties due to his own recklessness”. Taking into account that neglect and recklessness on the part of the employee leading to dismissal may not necessarily constitute “wilful misconduct” which may be sanctioned under Article 68.f of the Code, the government was invited to explain how these provisions are applied in practice. In reply, the government states, with reference to publicised jurisprudence, that the implementing body only imposes sanctions due to culpable unemployment in situations where the employee’s misconduct was deliberate and intentional and, consequently, the employer could not be expected to maintain the employment relationship. The government considers therefore that the provisions of the Unemployment Insurance Act are fully in conformity with the standards set out in the Code.

The Committee of Ministers has examined the important jurisprudence of the Dutch courts summarised in the government’s report, which includes a case of refusal to grant unemployment benefit on the ground that the person concerned neglected her duty and was thus culpably unemployed (RSV 2007, Magazine *Rechtspraak Sociale Verzekeringen*, issue 6, No. 155 WW). The Committee of Ministers understands that in this case the decision of the Institute for Employee Benefit Schemes (UWV) to refuse unemployment benefit was overturned by the Central Court of Appeal, which recognised that while the person concerned indeed neglected her duty, this neglect resulted not from wilful misconduct, but rather from the lack of leadership qualities necessary for the job for which she could not be blamed. This decision shows that the regime of sanctions for “culpable unemployment” under the Unemployment Insurance Act needs to be brought in line with the limitations set up by the Code, the purpose of which consists precisely in preventing the persons concerned from having to appeal to courts against improper sanctions imposed by the administration;

II. concerning Part IX (Invalidity benefit):

a. the provisions of Part IX of the Code and the Protocol stipulate that the rate of the invalidity benefit payable throughout the contingency to a fully incapacitated person (standard beneficiary), having completed a qualifying period of 15 years of employment, shall amount to at least 50% of the reference wage determined under Article 65 of the Code, if the benefit is wage related, or under Article 66, if it is a flat-rate benefit. A person shall be recognised as fully incapacitated if he is unable to engage in any gainful occupation to an extent of 66.6%, the remaining earning capacity being disregarded. A person considered to be unable to engage in any gainful occupation by definition cannot be required to work. Where classes of employees are protected, as in the Netherlands, the invalidity benefit shall be guaranteed without taking into account other income of the beneficiary or his family.

The Work and Income (Employment Capacity) Act of 10 November 2005 (WIA) defines a fully and permanently incapacitated person as a person able to earn, through work, no more than 20% of the hourly reference income (section 1.2.1, subsection 1), which means that he or she has lost 80-100% of their earning capacity. Persons who have lost between 35% and 80% of their earning capacity are considered to be partially capable of work (section 1.2.2) and split into the following disability categories: 35-45%; 45-55%; 55-65%, and 65-80%. The Committee of Ministers observes that the threshold of 80% incapacity established by the WIA is set much higher than the level of 66.6% (two thirds) fixed by the Protocol for defining a fully incapacitated person. This means that for the purposes of the application of the Code, as

amended by the Protocol, persons partially capable of work with a disability of 65-80% should be treated as fully incapacitated and their remaining earning capacity should be disregarded. The WIA, thus, would have been more consistent with the Code and the Protocol, if the category of permanently incapacitated persons with 65-80% disability were included under the definition of fully and permanently incapacitated.

Highlighting the distinction between the disability categories of 80-100% and 65-80%, the government explains that fully and permanently disabled persons are eligible for benefit on the basis of the Income Provision Scheme for Fully Occupationally Disabled Persons (IVA), while persons partially capable of work are entitled to a benefit on the basis of the Return to Work Scheme for the Partially Disabled (WGA). The Committee of Ministers has thus to examine whether the IVA benefit to persons with 80-100% disability and the WGA benefits paid throughout the contingency to those with 65-80% disability comply with the requirements of the Code, as amended by the Protocol;

b. IVA benefit: under the terms of the WIA, an employee (section 1.3.1) who is fully and permanently incapable of work (section 6.1.1, subsection 1.*b*) shall be entitled to an incapacity benefit of 70% (75% according to the report) of the monthly wage (section 6.2.1, subsection 1), provided that the benefit shall be reduced by 70% of the income earned by this person from employment or self-employment during this month (section 6.2.2, subsections 1 and 4). The report states that the eventual earnings or assets of the members of the family of the beneficiary are not taken into account in determining the IVA benefit. The Committee of Ministers notes that the amount of the incapacity benefit payable to a fully and permanently incapacitated employee who is not engaged in any gainful employment or self-employment, exceeds the level of 50% of the previous wage prescribed by the Code, as amended by the Protocol. The Code and the Protocol, however, do not authorise any reduction of the benefit in case a fully incapacitated person (66.6-100% disabled) is able to earn additional income from any gainful occupation, leaving them free to combine invalidity benefit with work. The Committee of Ministers observes that the IVA scheme could be made fully consistent with the Code by deleting section 6.2.2 of the WIA;

c. WGA benefits: the Committee of Ministers notes detailed explanations provided by the government on the main features of the Return to Work Scheme for the Partially Disabled (WGA). The WGA scheme consists of two phases: the wage-related WGA benefit and the subsequent phase, during which the benefit is related to the statutory minimum wage;

d. Wage-related WGA benefit: the particularity of the wage-related WGA benefit consists in that it currently integrates the unemployment benefit for the partially disabled persons who satisfy the eligibility requirements. A person with 65-80% disability maintains a certain working capacity and is, for that part, considered to be unemployed and must register as a jobseeker, make sufficient attempts to obtain suitable work and accept an offer of such work (section 4.1.4, subsection 1, of the WIA), conditions which normally apply to unemployment benefit recipients. By combining the unemployment benefit (WW) with the previous disability benefit (WAO), the WIA made it possible for a partially disabled person to apply for a single benefit, instead of for two benefits, which is calculated so that it is equal to the sum of the WW and the WAO benefits that he would have received. The Committee of Ministers observes that this new design integrating social security benefits for unemployment and partial disability is unique and could not have been foreseen by the drafters of the Code some 50 years ago. One has to admit that this arrangement has the merit of ensuring, on the one hand, that a partially disabled person automatically receives compensation for his loss in earnings as a result of unemployment and, on the other hand, that he is immediately stimulated to resume work and to use the employment service to speed up the reintegration process.

The Committee of Ministers has to point out however that Part IX of the Code does not deal with the contingency of partial disability and therefore should normally only be concerned with the wage-related WGA benefit for the category of persons with 65-80% disability, who would fall under the definition of fully and not partially disabled under the Protocol. The wage-related WGA benefit falls outside the scope of Part IX of the Code also because its eligibility requirements are those of the unemployment benefit and not those of the invalidity benefit. The Committee of Ministers also takes into account the fact that it is a short-term benefit (paid for 1.5 years after 15 years of employment history, for example) and persons who do not meet its eligibility requirements are immediately entitled to the long-term WGA benefits of the subsequent phase;

e. Wage supplement: the government indicates that, after the wage-related WGA benefit, the disabled person will be entitled either to a wage supplement if he works and fulfils an income requirement based on his residual earning capacity (section 7.2.3, subsection 3), or to a prolonged benefit (section 7.2.2, subsection 1). The Committee of Ministers points out that the residual earning capacity and the wage it brings to a person with two-thirds invalidity should not be taken into account for the purpose of his entitlement to the invalidity benefit under the Code. Consequently, with respect to the category of persons with 65-80% disability, the invalidity benefit in the form of the wage supplement, by its very nature, falls outside the conceptual scope of Part IX of the Code. Consequently, only the prolonged benefit provided for in the WGA scheme complies with the requirements of Part IX of the Code;

f. Prolonged WGA benefit: according to the government, if the WGA recipient does not work, he or she is entitled to the prolonged benefit which, for incapacity of 65-80%, is equivalent to 50.75% of the minimum wage and is thus higher than the 50% rate prescribed by the Protocol for a person with two-thirds invalidity. The government further indicates that any recipient of the WGA benefit is considered to be unemployed to the extent that the recipient's remaining working capacity is not utilised and must therefore register as a jobseeker, make sufficient attempts to obtain suitable work and accept such work, if offered (section 4.1.4, subsection 1, of the WIA). The WGA recipients are 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). Non-fulfilment of these obligations is sanctioned by the benefit being refused wholly or partially, permanently or temporarily, or by applying fines (Chapter 10 of the WIA). The Committee of Ministers cannot but observe that the nature and the extent of many of these obligations go beyond what may be reasonably required from a person with two-thirds invalidity and sanctioned under Article 68 of the Code. It appears, moreover, that the regime of obligations and sanctions imposed by the WIA is construed in such a way as to effectively deprive an insured person of the prolonged WGA benefit in case of non-compliance. The Committee of Ministers also considers that, while the regime of obligations and sanctions imposed by the WIA may indeed produce a positive reintegration effect with regard to persons belonging to disability categories of 35-45% and 45-55%, the psychological and physical pressure it may put on more fragile invalids with 65-80% disability could result in some undesirable results, such as deterioration of their state of health under the constant stress of trying to make full use of their remaining working capacity and fear of losing the benefit if their efforts are deemed insufficient;

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for

the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that the law and practice in the Netherlands give full effect to Parts II, III, IV, V, VII, VIII and X of the Code and the Protocol, and that they also ensure the application of Part IX, subject to the point mentioned below;

Decides to invite the Government of the Netherlands:

I. concerning Part IV (Unemployment benefit) in conjunction with Article 68.f: to draw the attention of the UWV and of the corresponding courts of appeal to the obligation of the Netherlands, under Article 68.f of the Code, to apply sanctions only where neglect or recklessness amount to wilful misconduct directly causing the unemployment of the person concerned;

II. concerning Part IX (Invalidity benefit):

a. IVA benefit, to consider deleting section 6.2.2 of the WIA with a view to enhancing the social protection and well-being of persons with over two-thirds incapacity in line with the Code, taking into account that the financial impact of this measure on the insurance scheme would in all probability be negligent;

b. prolonged WGA benefit, to consider bringing the regime of legal obligations and sanctions imposed by the WIA on the recipients of the prolonged WGA benefit in the disability category of 65-80% in line with Articles 54 and 68 of the Code, as amended by the Protocol, taking into account that, under the Protocol, a person with two-thirds invalidity should be liberated of any obligation to make use of his remaining working capacity;

III. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Norway
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 41st annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part IV (Unemployment benefit) of the Code, Article 20 (in conjunction with Article 68.h):

a. in the previous resolutions, the government has been urged to review the guidelines of the Directorate of Labour and Welfare so as to ensure that unemployed persons are not sanctioned for

refusing unsuitable job offers at least during the initial period of three months (13 weeks) provided for in Article 24 of the Code. The Committee of Ministers wishes to thank the government for having closely looked into the question and notes from its reply the following important elements calling for further action.

The government emphasises that during the first three months of unemployment, the jobseeker has the primary responsibility of finding a job, and will therefore determine which jobs are suitable. However, as time passes, the jobseeker must be ready to adjust his or her demands and ambitions, and expand the job search. On the basis of the jobseeker's CV and the labour market, the job request will be evaluated every third month. This evaluation can result in an agreement between the jobseeker and the LWS to expand the job search. The Committee of Ministers understands from these explanations that, in practice, the suitability of jobs searched for and offered is assessed for every new period of three months with a view to expanding the acceptable types of jobs by relinquishing certain criteria of suitability. It understands also that under this arrangement special rules apply for the initial period of unemployment of three months when the decision on the suitability of available jobs is largely left at the discretion of the jobseeker himself. This practice may be compared to the provisions regarding the "permitted period" in the United Kingdom, where during the first three months (13 weeks) of unemployment jobseekers may restrict their availability for employment only to jobs in their "usual occupation" (regulation 16 of the Jobseekers' Allowance Regulations, 1996). These provisions were deemed by the Committee of Ministers in 2002 to be compatible with the requirements of the Code;

b. As regards sanctions imposed on unemployed persons, the government reports that in 2007, fewer than 200 jobseekers had their benefits stopped during the first three months of unemployment because of refusal to accept offered work, refusal to accept work in another part of the country or refusal to accept part-time work.

c. In this connection, the Committee of Ministers further notes the assurances of the government that the unemployed will normally not get offered jobs from the Labour and Welfare Service (LWS), unless it is a job that corresponds to their education and qualifications. The LWS will initially take the time to identify the jobseekers' qualifications, working experience and job requests. The goal of this is to help the unemployed to find suitable employment. When considering whether the work is suitable, the LWS should – according to the Directorate of Labour and Welfare's guidelines, section A, Article 4.18 – also consider:

- how long the jobseeker has been unemployed;
- the probability of getting a job which corresponds to the jobseeker's qualifications;
- whether the offered job can give valuable working experience;
- whether the remuneration offered for the job involves an unreasonable reduction of income compared to what the person is receiving by way of unemployment benefits.

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the

measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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

Decides to invite the Government of Norway:

I. concerning Part IV (Unemployment benefit) of the Code, Article 20 (in conjunction with Article 68.h):

a. to draw on the experience of the United Kingdom and to consider how the existing practice of giving unemployed persons primary responsibility for their job search during the initial three months (13 weeks) of unemployment, and therefore a certain degree of discretion in the selection of job offers, could best be reflected in the guidelines of the Directorate of Labour and Welfare, particularly as regards its section G.4.1, which forbids jobseekers from making reservations as to the type of employment they will agree to and requires them to accept work even in occupations for which they are not trained or in which they have no previous experience;

b. to verify in all cases that jobseekers were not sanctioned for having refused to take up jobs that were unsuitable in view of their acquired professional status. It therefore invites the government, if necessary, to follow the example of Denmark where, in order to assess the extent to which the unemployed refuse job offers as being "suitable", the National Directorate of Labour, which deals with complaints and supervision in relation to the Unemployment Insurance Act, examined, in 2005, on a case-by-case basis all instances (352 files) of sanctions for refusal to take up a job offer. The Committee of Ministers considers that the results of this verification could help the government to decide whether or not the guidelines of the Directorate of Labour and Welfare need to be changed in order to ensure that the discretionary power to sanction the behaviour of the unemployed in the current labour market situation is being applied, with all due respect for their acquired professional and social status and within the limits prescribed by Article 68 of the Code;

c. to explain how the criterion which permits offering jobs remunerated at a level below that of the unemployment benefit could be retained in the guidelines of the Directorate of Labour and Welfare after the abolition on 1 January 2006 of the legal provisions which previously made it possible to compel unemployed persons to accept jobs offering less income than the unemployment benefit;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the

measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Portugal
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 23rd annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes, concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the

obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

On the basis of the detailed information provided by the government on the issues raised in the previous resolution, the Committee of Ministers finds that the law and practice in Portugal continue to give full effect to all the parts of the Code and the Protocol which have been accepted.

Decides to invite the Government of Portugal, concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Slovenia
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 third annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes, concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial

situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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

Decides to invite the Government of Slovenia, concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Spain
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 13th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part XI (Standards to be complied with by periodical payments), that the report refers to Act No. 40/2007 of 4 December on social security measures which establishes a legal framework for the agreement on social security measures concluded on 13 July 2006 by the government, the General Confederation of Workers, the Trade Union Confederation of Workers' Commissions, the Spanish Confederation of Employers' Organisations and the Spanish Confederation of Small and Medium-sized Enterprises. The reforms introduced by this act relate to practically all branches of social security with the objective of guaranteeing the sustainability of the system. They reinforce the principle of solidarity, guaranteed sufficiency and unified funding, and the contributory nature of the system, by improving the

link between the contributions received and the benefits obtained. In the current socio-demographic context characterised by the ageing of the population, the act facilitates the voluntary extension of working life beyond the statutory retirement rate, without thereby neglecting the need to compensate for the negative consequences affecting older workers who are obliged to leave the labour market early. The reforms are also intended to modernise the system in relation to new family needs, the increasing integration of women into the labour market and the phenomenon of immigration;

II. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis.

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

Decides to invite the Government of Spain:

I. concerning Part XI (Standards to be complied with by periodical payments), as the above reforms have changed the conditions for entitlement to, and the rules for the calculation of, several benefits, to demonstrate in future reports, once the necessary statistics are available, that the replacement rates established by the Code for the benefits in question continue to be achieved;

II. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security and its Protocol
by Sweden
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 41st annual report on the application of the Code, as modified by the Protocol, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part III (Sickness benefit) and Part IX (Invalidity benefit). The government indicates that to make the sick leave process more efficient and to strengthen the incentives and opportunities to return to work, a more active sick leave process will be introduced as of 1 July 2008. In the process, fixed time limits are introduced to evaluate the capacity to work. During the first 90 days, the Swedish Social Insurance Agency will assess if the insured person can perform the ordinary work or other suitable

temporary work offered by the employer. To have a right to sickness benefit from day 91, the agency shall consider if the insured person can execute any other work offered by the employer. From the 181st day of the sickness leave period, that assessment shall be expanded to the whole regular labour market. It appears from the explanations given by the government that the concept of an active sick leave process subjects the right to sickness benefit of an insured person to the periodic assessment of the person's incapacity for work in relation to the former or suitable work offered during the first 90 days and in relation to any other work regardless of its suitability thereafter.

The Committee of Ministers recalls that, as a result of the reform of the invalidity benefit in Sweden in 2003, the disability pension was separated from the old-age pension system and incorporated into the national health insurance system, where it was replaced by new social security benefits – sickness compensation, which replaced disability pension, and limited sickness compensation or activity compensation, which replaced the temporary disability pension. In its resolution of 2004, the Committee of Ministers pointed out that, for the purposes of the application of the Code, the disappearance of the concept of disability pension in Sweden may result in invalidity benefit ceasing to exist as a separate benefit branch, and Sweden's compliance with the provisions of Part IX (Invalidity benefit) of the Code should henceforth be judged on the basis of compensation benefits provided by sickness insurance. In this context, the Committee of Ministers now observes that the fusion of the disability benefit with sickness benefit also leads to the change of conditions under which sickness benefit is granted. In fact, the new rules for the assessment of the capacity for work under the active sick leave process, which are typical for invalidity benefit in case of temporary partial incapacity, were introduced after the temporary sickness (invalidity) compensation was abolished in 1 July 2008;

Sickness benefit now contains features proper to the invalidity benefit, which may take it beyond the definition of the contingency covered by the sickness benefit branch in accordance with Article 14 of the Code. The Committee of Ministers underlines that sickness benefit covers "incapacity for work" in relation to the job for which the insured person is employed, while invalidity benefit covers "inability to engage in any gainful occupation" whatsoever. According to Articles 54 and 18 of the Protocol, invalidity benefit takes over where such inability persists after the exhaustion of sickness benefit, which shall be granted for at least 52 weeks in each case of sickness. When read together these provisions demand that, within the minimum period of 52 weeks, sickness benefit shall be paid at the rate prescribed by the Protocol until permanent or temporary invalidity of the person concerned is formally established, in which case sickness benefit can be replaced by the partial or full invalidity benefit. Until this happens, the right to sickness benefit under Part III of the Code cannot be subjected to the periodic assessment of the beneficiary's capacity for work in relation to job offers outside his regular employment;

II. concerning Part IV (Unemployment benefit):

a. Article 20 (definition of suitable employment). The report mentions a number of important changes in Swedish unemployment insurance. The possibility for jobseekers, during the first 100 days of benefit, to limit the search for work within their profession and vicinity was abolished on 2 July 2007 and jobseekers must be prepared to accept any suitable work. According to the information provided by the government in its report on Convention No. 168, the kind of work a jobseeker must seek and accept, and the limitations applicable thereto, are specified in the regulations on suitable work (IAFFS 2004:3) issued by the Swedish Unemployment Insurance Board, which entered into force on 1 September 2004. It appears that jobseekers, after 100 days on unemployment benefit, must accept any suitable job even if it is outside their previous profession and training. If a jobseeker rejects an offer of suitable work without

acceptable reasons, the daily unemployment benefit will be reduced for the first refusal by 25% for the period of 40 days of compensation and for the second refusal by 50% for the next 40 days; in cases of a third refusal the entitlement to the benefit is terminated. In determining the suitability of the work offered with such conditions, reasonable consideration is given to the applicant's capacity for the work and other personal circumstances.

The Committee of Ministers observes that the above changes might devoid the concept of "suitable employment", on which Part IV of the Code is based, of its role of protecting the professional and social status of jobseekers during the prescribed initial period of unemployment;

b. Article 24.4 of the Code, as amended by the Protocol. The government indicates that from 1 July 2008 the waiting period for unemployment benefit will be increased from five to seven days in order to provide a greater incentive for employed persons to change jobs without a period of unemployment in between. The Committee of Ministers understands that, under Swedish law, seven benefit days would correspond to nine calendar days. In this regard, while the Code allows not paying unemployment benefit for a waiting period of the first seven calendar days in each case of suspension of earnings, the Protocol accepted by Sweden limits this option to three calendar days in each case or to six calendar days within a period of 12 months;

c. governance and administration of social security. The Committee of Ministers notes from the government's report that the Swedish social security system is undergoing profound structural and organisational changes accompanied by measures to trim down the amounts and the traditionally generous conditions for granting of benefits. It would ask the government to include in its future reports information on any studies of the gains in the efficiency of the social security administration and in the effectiveness of the governance of the system achieved through the reform process. In this respect the Committee of Ministers wishes to draw the attention of the interested parties to the following important changes reported by the Swedish Government:

1. A comprehensive reorganisation of the Swedish Social Insurance Agency (Försäkringskassan) was implemented by the end of 2008. The purpose of the reorganisation is to achieve a more efficient social insurance administration with improved customer service. The insurance centres and offices are to be established under national leadership in order to achieve uniform and efficient processing. The offices will co-operate with, and in some cases share their premises with, the Employment Office and the Tax Agency.
2. On 1 January 2008, the Swedish Labour Market Authority (Arbetsmarknadsverket – AMV) was reorganised to form a single body: the General Directorate of Labour (Arbetsmarknadsstyrelsen – AMS). At the same time the 20 county employment offices were closed and a new authority, the Public Employment Service (Arbetsförmedlingen), was created. The general aim of this reform is to create an organisation which provides a greater guarantee of legal certainty and is more effective, more flexible and less costly.
3. A new agency for the inspection of social insurance is planned for 2009. The agency shall supervise and examine the quality of the implementation of the legislation concerning the social insurance and the efficiency of the social insurance.
4. A committee of inquiry has been appointed concerning the introduction of a new agency for pension benefits and will present its report by December 2009.

5. Since 1 January 2008, the decisions on who will be granted sickness and activity compensation, disability allowance, care allowance for sick and disabled children, annuity and assistance allowance are made by an administrative official within the Swedish Social Insurance Agency. Previously, these decisions were made by regional panels of representatives from the political parties (social insurance boards). The change was introduced to secure uniform and lawful processing of insurance cases.

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis.

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

Decides to invite the Government of Sweden:

I. concerning Part III (Sickness benefit) and Part IX (Invalidity benefit), to assess whether and to what extent the changes in the sickness benefit branch mentioned in the 41st annual report continue to give effect to these requirements of the Code, as amended by the Protocol, and to include detailed explanations in its next report as regards the application of the provisions of both Part III and Part IX of the Code, together with an English translation of the corresponding provisions of the new legislation. It notes in this respect that the definition of “sickness” and “capacity to work” are being examined by a committee, which will deliver its report by April 2009, and that further changes will be introduced as regards permanent sickness compensation. The Committee of Ministers expresses the hope that in introducing such radical changes to sickness and invalidity benefits, the government will keep in mind the international obligations of Sweden under the Code and its Protocol and the possibility of seeking technical advice from the Council of Europe and the ILO;

II. concerning Part IV (Unemployment benefit):

a. Article 20 (definition of suitable employment), to explain to what extent, in assessing the suitability of employment offered during the initial period of protection of at least 21 calendar weeks prescribed in Article 24.1 of the Protocol (which equals 105 days of the payment of unemployment benefit in Sweden, where the benefit is paid for five days per week), account is taken of such criteria as the length of service of unemployed persons in their previous occupation, their acquired experience and the current labour market situation in their place of residence. The Committee of Ministers also draws the government’s attention to the fact that during this period applying sanctions for refusal to accept a job offer which, in terms of the said criteria, could not be considered suitable would be in contradiction with the requirements

of the Code. In order to be able to assess the practical impact of the Swedish regulations on suitable work since their entry into force in 2004, the Committee of Ministers would like the government to provide detailed statistical data on the number of cases in which sanctions were applied for refusal of “suitable” work offers, as well as on the number of appeals lodged and upheld against these decisions. It also invites the government to provide a translation into English of the main provisions of these regulations and of any additional guidelines for the officials who determine the suitability of the work offered, the limitations applicable thereto and the reasons for refusing it, which are deemed acceptable according to established practice;

b. Article 24.4 of the Code, as amended by the Protocol, to indicate whether and how the new rules for the waiting period could be made compatible with the requirements of the Code, as amended by the Protocol;

c. governance and administration of social security, to provide statistical information which might capture and reflect the impact of this change, including statistics before and after the change in question on the number of decisions refusing benefits or applying other sanctions and the number of appeals lodged against such decisions;

III. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Switzerland
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 30th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part VI (Employment injury benefit), on 30 May 2008, the government adopted the draft first review of the Federal Accident Insurance Act (LAA). The draft text proposes, among other measures, to repeal the following provisions which are considered as not being in conformity with Switzerland's international commitments (in particular, ILO Convention No. 102): LAA section 10.3 *in fine*, allowing the government to limit care at home; LAA section 29.2 which makes the entitlement to benefits of the surviving spouse subject to certain conditions where marriage was contracted after the accident which caused the death of the insured person; LAA section 29.5, authorising the reduction or refusal of benefits to the surviving spouse where he or she has seriously failed in their duties towards his or her children.

The Committee of Ministers also notes that, in order to avoid over-compensation, the draft text advocates the reduction of periodical benefits for employment injury when the insured person reaches the ordinary retirement age. The rate of reduction depends on the year of the accident, but is set at 50% or over. In the event of total loss of earnings capacity, the invalidity benefit amounts to 80% of the insured earnings. As Article 38 of the Code guarantees that the benefit shall be granted at the prescribed rate throughout the contingency, the Committee of Ministers draws the government's attention to the fact that, notwithstanding the above reductions, for the standard beneficiary who has reached the ordinary age of retirement the amount of the periodical payments for invalidity under accident insurance for total loss of earnings capacity shall in all cases remain above 50% of the wage of a skilled manual worker, subject to Article 68.c of the Code;

II. concerning Part IX (Invalidity benefit):

a. the government indicates that the fifth review of AI (Assurance Invalidité) entered into force on 1 January 2008 with the objective, among others, of slowing down the increase in the number of new periodical payments. An early detection system has been introduced with the aim of preventing the invalidity of persons suffering from uninterrupted loss of capacity for work of at least 30 days or where, for health reasons, they are repeatedly absent for short periods for one year. The AI examines the individual situation of the insured person and determines whether an early intervention is appropriate. Early intervention measures adopted without prior investigation, such as the adaptation of the workplace, training courses, placement, vocational orientation and socio-occupational rehabilitation, are intended to enable persons suffering from incapacity for work to remain in their job or to allow their rehabilitation for a new job in the same enterprise or elsewhere. In parallel, the obligations of insured persons (the duty to collaborate) and the possibilities of imposing penalties under the AI are reinforced: accordingly, insured persons are under the obligation to do anything that may be reasonably required of them to reduce the duration and extent of their incapacity for work and to prevent the emergence of invalidity; they have to participate actively in the implementation of all measures that may be reasonably required and which contribute to maintaining their current job or their rehabilitation for working life. If they do not comply with their obligation to collaborate, benefit may be reduced or refused;

b. the Committee of Ministers further notes that the rules respecting the commencement of entitlement to periodical payments have been modified: entitlement to periodical payments is granted at the earliest six months following the submission of an application under the AI. This new rule is intended to encourage persons suffering from incapacity for work due to sickness to submit an application under the AI as rapidly as possible so that the latter may, by means of targeted early intervention measures and rehabilitation, prevent the granting of periodical payments;

III. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis.

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

Decides to invite the Government of Switzerland:

I. concerning Part VI (Employment injury benefit), to keep the Committee of Ministers informed of any progress achieved in the adoption of the first review of the LAA by Parliament;

II. concerning Part IX (Invalidity benefit):

a. to specify the criteria used by the competent authority to apply the penalties envisaged in section 7.b of the Federal Invalidity Insurance Act in the light of the restrictive provisions of Article 68 of the Code;

b. in view of the fact that, under Article 58 of the Code, invalidity benefit shall be granted as from the first day of the contingency, as defined in Article 54, to confirm that this new rule is not likely to place the person concerned in a situation in which, once entitlement to daily benefits is exhausted, she or he will be without any benefit while awaiting entitlement to the periodical payments to take effect,

III. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by Turkey
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 27th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. that the government states in its very informative report that, since the adoption in 2006 of the Social Insurance and General Health Insurance Act No. 5510, the entire social security system was being reformed and restructured. However, because the entry into force of the act in full was postponed until October 2008, the report provides information about the application of the previous acts. The central and provincial social security organisations functioning under the former acts and their personnel should be gradually brought under the new single Social Insurance Institution established by Act No. 5502 of 2006 within a period of three years, which could be prolonged up to two years by a cabinet decree. At present, the organisation of the central units of the Social Insurance Institution composed of four general

directorates and 24 departments has been completed. The Committee of Ministers hopes that, with the entry into force of Act No. 5510 and the completion of the reform of the central social security administration, the government's next report will explain any changes in the application of the Code under the new legislation and will include detailed replies to the following questions, which the Committee of Ministers is raising for the third consecutive year;

II. concerning Part II (Medical care), Article 10.2 of the Code, that the report states that, in cases of outpatient treatment, workers insured under Laws Nos. 506 and 2925 have to pay 20% of the cost of the prescribed medicines in respect of themselves and 10% in respect of their 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 Turkish lira (YTL) 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 (YTL 591.47 in 2006). Moreover, the fund pays the full cost of medicines in cases of outpatient or home treatment of persons requiring long-term treatment for certain illnesses as determined by the Ministry of Health (tuberculosis, cancer, chronic kidney disease, settled insanity, transplantation, etc.);

III. 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;

IV. concerning Part VIII (Maternity benefit), Article 52, that the report states that the daily temporary incapacity allowance is paid for the total period of sixteen weeks before and after childbirth;

V. 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 the changes do not exceed the capacity of the insured population to adapt to them. Special concern should be paid to the situation of those categories of insured persons who, because they are illiterate, weak, poor or living in remote areas, may experience particular difficulties in abiding by the new rules of conduct 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 to all, but that the services themselves should be people centred, client oriented and easily attainable. 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. As the cornerstones of good governance of social security institutions, these principles gain in importance when the institutions concerned undergo radical reorganisation and restructuring;

VI. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for

the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to “take all measures required for this purpose”. The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this context, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

Finds that law and practice in Turkey continue to give full effect to Parts II, V, VI, IX and X of the Code and that they also ensure the application of Parts III and VIII, subject to the government replying to the questions put to it by the Committee of Ministers of the Council of Europe in 2006, 2007 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, in the light of the comparison made above, 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 provisions of reducing the burden of cost sharing, such as those applicable to civil servants, exist 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 in these cases, 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 Article 52 of the Code, which provides for a minimum duration of 12 weeks for the benefit payment;

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.

V. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

**Draft Resolution CM/ResCSS(2009)...
on the application of the European Code of Social Security
by the United Kingdom
(Period from 1 July 2007 to 30 June 2008)**

*(Adopted by the Committee of Ministers on ... 2009
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 40th annual report on the application of the Code, for the period from 1 July 2007 to 30 June 2008;

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 79th meeting in November and December 2008,

Notes:

I. concerning Part III (Sickness benefit) of the Code, the detailed information concerning the inclusion of the Child Tax Credit into the calculation of the replacement rate of the short-term benefits provided by the government in reply to its previous resolution. It also notes that the government's next report will include full details on the implementation of the new Employment and Support Allowance which is to be introduced from 27 October 2008.

II. concerning Part IV (Unemployment benefit), the Committee of Ministers recalls that the system of social protection against unemployment in the United Kingdom comprises various social security benefits including contribution-based and income-based Jobseeker's Allowances (JSA), the Working Tax Credit, which makes low-paid jobs more attractive for the unemployed, and a wide range of means-tested social assistance benefits, which offer protection against poverty.

III. concerning Part V (Old-age benefit), Article 28.a, that in its previous resolution, the Committee of Ministers noted that the rate of retirement pension for a standard beneficiary in 2006 represented 32.06% of the reference wage, which is far below the minimum replacement level of 40% prescribed by the Code. In view of the ongoing pension reform in the United Kingdom, the government was asked to indicate the part of the replacement income in retirement which, in the forecasted time frame, would be provided by the Basic State Pension (BSP) and the Second State Pension (SSP), as well as the part which would be supplied from the savings in personal bank accounts. In reply, the government indicated that, for the median earner making £24 440 in 2007/08 earning terms, and reaching state pension age in 2055, total weekly retirement outcomes in the year of retirement would represent £223 and ensure the replacement level of 47.5%. Of this total, BSP (£82) and SSP (£69) in 2055 will ensure the replacement level of only 32.16%, the same as in 2006, which will remain below the level prescribed by the Code. The Committee of Ministers understands therefore that to reach the projected replacement level of 47.5%, the government is counting on the private savings accrued in personal accounts, which are expected to generate a private pension (£72) providing about one third of total retirement income;

IV. concerning the financial crisis, that European social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems. The Committee of Ministers recalls that, to enable member states to discharge their general responsibility for the financial viability of social security, Article 70.3 of the European Code places each state under the obligation to "take all measures required for this purpose". The Committee of Ministers trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the state to ensure the viability and sustainable development of social security.

In this connection, the Committee of Ministers wishes to emphasise that the system of regular reporting and supervision of the application of the Code could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member states to combat the crisis;

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

Decides to invite the Government of the United Kingdom:

I. concerning Part IV (Unemployment benefit), to show in its next report, on the basis of updated statistics, that the number of persons protected by the benefits included into the system satisfies the coverage requirements of Articles 5 and 21 of the Code. Please indicate the amounts of these benefits which would be payable, in the case of unemployment, to a person having received the reference wage of an ordinary adult male labourer, determined under Article 66 of the Code. The Committee of Ministers would also be grateful to receive updated information for the same time period on the total number of

unemployed persons in the country, the percentage of unemployed persons receiving the contribution-based JSA alone and the income-based JSA alone, as well as the average duration recipients spent on these benefits before returning to work;

II. concerning Part V (Old-age benefit), Article 28.a, to provide an actuarial forecast under the best possible scenario showing by which year private pensions of at least 50% of all employees in the country would ensure, together with BSP and SSP, the total retirement income of these employees, which will attain the 40% replacement level guaranteed by the Code. The Committee of Ministers also invites the government to indicate whether the current financial crisis has made it necessary to introduce corrections in the ongoing pension reform as regards the sustainability of the state pension system and the expected growth of private pensions;

III. concerning the financial crisis, and with a view to helping the Council of Europe bodies to forge a concerted response to the crisis, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Code in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.