



Explanatory Report to the Interim Agreements concerning Social Security Schemes *

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Preface

1. Following the accession of non-European Union member States to the Council of Europe, interest has been revived in the European interim agreements (ETS Nos. 12 and 13). These agreements constitute a first step towards a better co-ordination of social security legislation between Contracting Parties by ensuring equal treatment in relation to national legislation between nationals of one Contracting Party and nationals of other Contracting Parties, and provide for the extension to nationals of all Contracting Parties of benefits deriving from bilateral or multilateral conventions on social security concluded between two or more Contracting Parties.

2. The Committee of Experts for Co-ordination in the Field of Social Security (CS-CR) prepared the present explanatory report in the hope that up-to-date comments on the provisions contained in the interim agreements would facilitate their ratification by states having shown an interest for them. The observations made here aim at a better comprehension of the agreements' provisions and the reasons for their inclusion.

3. The present explanatory report was prepared bearing in mind the main events to have taken place in the field of international social security co-ordination since the interim agreements were drafted, such as the entry into force of the European Convention of Social Security (ETS No. 78) and the application of Regulation (EEC) No. 1408/71.

I. Introduction

4. The European interim agreements date back to a recommendation adopted by the Consultative Assembly at its first session on 6 September, 1949 on the role of the Council of Europe in the field of social security, in which it called upon member states to "be guided by action already taken through bilateral or regional agreements in order to prepare one multilateral agreement legislation completely applicable to the nationals of other countries" ⁽¹⁾. The Assembly thus proposed equality of treatment as regards social security for the nationals of all member States.

(*) The Committee of Ministers took note of this Report at its 700th meeting, on 1 March 2000. See document [CM\(2000\)22](#).

(1) First Session, 1949: Doc. 79; I, 3.

5. The Committee of Ministers examined first the possibility of extending to all member states the provisions of the multilateral Convention on Social Security signed on 7 November, 1949, in Paris by the five signatory states of the Brussels Treaty ⁽¹⁾. In view of the complexity of the problem, it decided to convene a Committee of Experts on Social Security. At its first meeting, the committee of experts came to the conclusion that this extension could not be reached and therefore, as an interim measure, proposed the conclusion of provisional multilateral agreements.

6. Considering that it would be difficult for some member states to ratify a text treating all social security aspects, the committee of experts prepared, with the technical assistance of the International Labour Organisation, two separate agreements.

7. The first interim agreement (No.12 of the Council of Europe Treaty series) covers old-age, invalidity and survivor's benefits ⁽²⁾. The second interim agreement (No.13 of the Council of Europe Treaty series) covers sickness, maternity, unemployment, employment injury benefit, death grants and family allowances ⁽³⁾.

8. Each of these interim agreements has a Protocol extending their provisions to refugees as defined in the Convention on the Status of Refugees, signed at Geneva on 28 July 1951. Annexes I and II of each agreement specify the social security schemes and the bilateral and multilateral agreements to which they apply; Annex III of each agreement lists the reservations made by Contracting Parties.

9. The interim agreements were signed on 11 December 1953 and entered into force on 1 July 1954. The protocols to these agreements were also signed on 11 December 1953 and entered into force on 1 October 1954.

10. As their name implies, the interim agreements were originally conceived as a provisional measure. Accordingly, when the European Convention on Social Security was drawn up, ⁽⁴⁾ account was taken of the interim agreements, which it was designed to replace in relations between Contracting Parties. Article 76 of the said convention provides that "from the date of entry into force of this Convention, the provisions of the European Interim Agreement and Protocol thereto shall cease to be applicable in relations between Contracting Parties"

11. The provisions of the interim agreements will, however, continue to apply between States which have not ratified the convention and between such States and Contracting Parties to the convention. In any case, the coming into force of the European convention between two member States will not diminish the rights of a national of a Contracting Party of the interim agreements who did not ratify the convention.

12. However, in recent years, accessions to the Council of Europe of European States which are not members of the European Union (primarily the countries of central and eastern Europe) have revived interest in the interim agreements amongst these countries and have given them renewed relevance.

(1) This convention, signed between Belgium, France, Luxembourg, The Netherlands and the United Kingdom, guaranteed equal treatment to nationals of each Contracting Party in the application of the respective social security legislation and connected the bilateral Conventions concluded between the Contracting Parties of this treaty.

(2) The official title of the agreement is: European Interim agreement on Social Security schemes relating to old-age, invalidity and survivors.

(3) The official title of the agreement is: European Interim agreement on Social Security other than schemes for old-age, invalidity and survivors.

(4) The European Convention on Social Security entered into force on 1 March 1977 and has been ratified by Austria, Belgium, Italy, Luxembourg, the Netherlands, Portugal, Spain and Turkey by 31 December 1999.

II. General principles of the interim agreements

13. Each agreement gives, within its own field of application, effect to the following main principles :

a. Equal treatment in each Contracting Party, with respect to the laws and regulations on social security, between its own nationals and the nationals of other Contracting Parties.

b. Extension to nationals of all Contracting Parties of the advantages derived from bilateral or multilateral conventions on social security concluded between two or more Contracting Parties.

14. Article 1 of each agreement determines its material scope. Article 2 embodies the principle of equality of treatment and states the conditions for such equality. Article 3 embodies the principle of the extension of the advantages from existing bilateral and multilateral conventions. In regard to non-contributory social security schemes these principles are applied only after certain waiting periods, which are considered necessary and reasonable, in view of the fact that benefits under such schemes are paid entirely out of public funds.

15. The agreements do not apply to public assistance, special schemes for civil servants or benefits paid in respect of war injuries or injuries due to foreign occupation.

16. When drafting the agreements, it was found necessary to enable Contracting Parties to make reservations as regards the application of the principle of equality of treatment to the social security schemes in question and as regards the bilateral and multilateral conventions to which the agreements apply. Also, any new member states ratifying the agreements may use the right to formulate a reservation.

17. The three annexes respectively form an integral part of each interim agreement. Annex I determines the schemes to which the agreement applies, Annex II names the bilateral and multilateral conventions on social security concluded between Contracting Parties to which the agreement applies and Annex III contains the reservations expressed by the Contracting Parties.

18. Extension of the agreements to refugees: each agreement has a protocol extending their provisions to refugees as defined in the Geneva Convention on the Status of Refugees of 28 July 1951.

III. Detailed comments on the interim agreements

19. With the exception of Articles 1, 2 and 3, the corresponding articles of the two agreements are identical. Even the three first articles correspond to a large extent. Therefore, separate remarks on each agreement will be made only where necessary.

Article 1

20. Article 1 of each agreement enumerates the types of benefit to which that agreement applies. The two agreements are intended to cover the whole field of social security, including contributory as well as non-contributory schemes. However, the agreements provide for a different application to contributory and non-contributory schemes.

21. Death grants, and invalidity and survivors' benefits granted under the legislation on employment injury scheme, are excluded from Interim Agreement No.12 because they are covered by Agreement No.13.

22. Public assistance, special schemes for civil servants and benefits for war or occupation victims are excluded from the material scope of the agreements. No definition of the term "assistance" is given in the agreements. But, according to Article 2. a. i of the European Convention on Social and Medical Assistance, "assistance means in relation to each Contracting Party all assistance granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition, other than non-contributory pensions and benefits paid in respect of war injuries due to foreign occupation".

Paragraph 1

23. No definition of the term "social security" and "laws and regulations" is given in the agreements. The scope of the agreements in this respect is, however, determined by the sub-paragraphs of paragraph 1 and by the list of laws and regulations contained in Annex I (see further comments on Article 7).

Paragraph 2

24. No definition of contributory and non-contributory schemes is given in the agreements. However, reference can be made to Article 1. y of the European Convention on Social Security, according to which contributory scheme means "a scheme which provides for benefits, the award of which depends either on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity", and non-contributory scheme means "a scheme under which the award of benefits does not depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity".

Paragraph 3

25. Under this paragraph it is made clear that the term "benefit" covers any increases or supplement to the benefit.

Paragraph 4

26. During the preparation of the agreements, the question arose of defining the terms "nationals" and "territory", which are used in the text of the agreements in many places. Because of difficulties both of a legal and political nature in finding definitions of these terms it was decided that these terms should be defined by each Contracting Party in a declaration to be transmitted to the Secretary General, for communication to the other Contracting Parties.

Article 2

Paragraph 1

27. This paragraph incorporates the principle of equal treatment between the nationals of the Contracting Parties and lays down the conditions in respect of benefits covered by each agreement.

28. The general rule is that the person in question must be resident or ordinarily resident in the territory of one of the Contracting Parties, but for certain benefits the person has to be resident or ordinarily resident in the territory of the Contracting Party of which he claims the benefits. As the agreements do not define the term "resident" or "ordinary resident", the interpretation of these terms shall be determined by each Party.

29. Interim Agreement No.12 - It follows from Article 2, paragraph 1. c. that in relation to contributory old age, invalidity or survivors' benefits, equal treatment is effected even if the beneficiary resides in the territory of any of the other Contracting Parties, whenever these benefits, when provided to nationals, are exported to the former Party. With regard to the establishment of the right to benefits, however, the residence requirements may be stricter for invalidity benefits than for the other benefits covered by this agreement, since equal treatment must only be provided if the claimant has been ordinarily resident in the country concerned at the time of the contingency giving rise to the claim.

30. With regard to benefits under non-contributory schemes, equal treatment can be limited to a person who has been residing for a total of fifteen years from the age of 20 in the territory of the Contracting Party responsible for the provision of the benefit, has been ordinarily residing continuously for at least five years at the time when the benefit is claimed, and continues to be ordinarily residing in the territory of that Contracting Party.

31. Interim Agreement No.13: The main rule, covering any benefit other than in respect of employment injury, is that the person in question must be ordinarily resident in the territory of the Contracting Party of which he claims the benefit.

32. In addition to the above general rule, it is provided that the further requirement that events leading to benefits claimed in respect of sickness, maternity or unemployment should have occurred after the person in question became ordinarily resident in the country concerned.

33. In respect of benefits provided under a non-contributory scheme, other than benefits for employment injuries, it is provided that the claimant should have resided in the territory where he makes the claim for at least six months.

34. The reference in Article 2 in both agreements to Article 9 indicates that the equality of treatment may be subject to reservations (see further comments on Article 9).

Paragraph 2

35. This paragraph covers specifically cases where entitlement to benefit is not based on nationality, but on place of birth.

Paragraph 3

36. Article 2 of Interim Agreement No.13 has a third paragraph relating to discrimination on grounds of nationality, where the right to benefit depends on the nationality of a child.

Article 3

37. This article incorporates the other main principle of the two agreements: extension to the nationals of all Contracting Parties of the advantages deriving from the bilateral or multilateral conventions on social security concluded between two or more Contracting Parties. The article is identical in both agreements except for the residence period required in relation to non-contributory schemes. The difference between the agreements in this respect is the same as with regard to the application of the principle of equal treatment (see comments to Article 2). The reference to Article 9 again indicates the possibility of reservations.

38. There are a considerable number of bilateral social security conventions in force between member States. They provide, among other things, for the maintenance of acquired rights and of rights in course of acquisition when a person moves from one country to the other and, in particular, for adding together insurance periods for the purpose of establishing the rights to receive benefits and calculating the amount of benefits due. These conventions may be limited in their personal scope to nationals of both Contracting Parties. The extension provided by Article 3 of the agreements is relevant only if the bilateral convention is not already applicable to the nationals of other States.

39. The importance of the agreements in this connection is best shown by an example : State A and State B, which are Parties to the agreements, have concluded a bilateral convention of the above type. If a national of any other state which is a Party to the interim agreements comes to work in State A he will be insured on the same basis as a national of that state. If, after some time, he proceeds to the State B, he will not only be treated there like a national of State B, but he may also invoke the bilateral convention between A and B, so that he will benefit from all the advantages of the bilateral agreement.

40. Article 3 will also apply to multilateral conventions concluded between some of the Contracting Parties and other States, provided that no additional obligations will thereby be imposed on those third party States.

Article 4

41. This article concerns situations where, in the past, benefits have not been paid or have been suspended for reasons relating to the nationality or residence of the persons concerned. They may, in such cases, on application by those persons, be paid or resumed from the date of the entry into force of the agreements in all Contracting Parties concerned. The application must be submitted within a period of one year. Failing this, the benefit shall be awarded or reinstated at the latest from the date of the claim.

Article 5

42. This article guarantees that in ratifying the interim agreements there shall be no limitation of any acquired rights.

Article 6

43. This article makes it clear that the agreements do not apply to national laws or regulations relating to the election of persons concerning the administration of social security schemes.

Article 7

44. Annex I to Interim Agreement No.12 and Annex I to Interim Agreement No.13 taken together are designed, in regard to each Contracting Party, to contain a list of all its social security schemes, without exception. Thus, even social security schemes to which a government does not want the agreements to apply should be listed, but in such a case a reservation may be made. Annex I is intended not to mention in detail the various laws and regulations, but only the different schemes relating to social security. Thus, if a new law or regulation relates to a scheme already listed in Annex I and does not change the character of the scheme, it is not necessary to notify such law or regulation to the Secretary General of the Council of Europe.

45. Annex I should also indicate, in regard to each scheme, whether it is of a contributory or a non-contributory nature, as it was done by the Contracting Parties.

Article 8

46. Annex II includes all bilateral and multilateral conventions to which Article 3 applies. Bilateral or multilateral conventions which provide only for equality of treatment, are not included in Annex II.

Article 9

47. This article makes it possible for the Contracting Parties to make reservations which may limit the full application of the principles incorporated in the agreements either with regard to a certain social security scheme or to a particular bilateral or multilateral convention. Such reservations may be made at the date of signature or at a future date in connection with the notification of any new law, regulation or convention.

48. Reservations made by the Contracting Parties are set out in Annex III.

49. Any Contracting Party may withdraw either in whole or in part any reservation made by it as described in paragraph 3.

Article 10

50. This article defines the legal status of the annexes. Concerning the procedures for the amendment of the annexes, see respectively Article 7, paragraph 2, Article 8, paragraph 2 and Article 9, paragraphs 2 and 3 of the interim agreements.

Article 11

51. Paragraph 1 provides for arrangements between competent authorities of the Contracting Parties for the implementation of the agreements, although the need has never occurred.

52. Paragraph 2 provides that concerning the settlement of disputes regarding the interpretation of the agreements or their application the competent authorities of the Contracting Parties shall in the first place negotiate between themselves.

53. Paragraphs 3 and 4 deal with cases where it has not been possible to settle the dispute by the use of the negotiation provided for in paragraph 2.

Article 12

54. The article provides that even a Contracting Party which denounces the agreements will respect rights acquired on the basis thereof. The special reference to the right to receive benefits under the laws and regulations of one of the Contracting Parties while the beneficiary is resident in the territory of another, applies to benefits in respect of employment injury, and in respect of old age and invalidity or survivors' benefits acquired under a contributory scheme.

55. The question of rights in course of acquisition at the time when a denunciation becomes effective may be settled by special agreements between the Contracting Parties concerned. If no such agreements are concluded, the principle is that provisions of the agreement which has been denounced continue to apply to insurance periods and equivalent periods completed before the date when the denunciation becomes effective.

Article 13

56. The provisions of this article correspond generally to the model final clauses adopted by the Committee of Ministers of the Council of Europe.

Article 14

57. This article envisages the possibility of non-member states of the Council of Europe to accede to the agreements on the invitation of the Committee of Ministers and lays down the procedure to be followed in such a case.

Article 15

58. This article contains standard provisions for notification by the Secretary General of important information received by him under the provisions of the agreements.

Article 16

59. Although the agreements are concluded for an initial period of two years, no positive act is required in order to keep them in force indefinitely, from year to year. On the other hand, a state which wishes not to be bound by the agreements any longer must positively denounce them, and the denunciation procedure is, for practical reasons, so arranged that the denunciation always takes effect from the expiry, either of the initial two-year period or of a subsequent yearly period.

IV. Comments on the protocols to the Agreements

60. Article 1 of each protocol defines what is meant by "refugee" and makes use of the definition in the Geneva Convention on the Status of Refugees of 28 July 1951.

61. Article 2 provides that the provisions of the agreements shall apply to refugees under the same conditions as they apply to the nationals of the Contracting Parties thereto, provided that Article 3 of the agreements shall apply to refugees only in cases where the Contracting Parties to the agreements to which that article refers have ratified the protocol to the agreement concerned or acceded thereto.

62. The provisions of Article 3 correspond to the final clauses of the agreements.