COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Treaty Series - No. 78

Explanatory Report to the European Convention on Social Security

Paris, 14.12.1972

I. The European Convention on Social Security and the Supplementary Agreement for the application thereof, drawn up within the Council of Europe by the Committee of Experts on Social Security, were opened to signature by the member States of the Council on 14 December 1972, at Paris, on the occasion of the 51st Session of the Committee of Ministers of the Council of Europe.

II. The text of the explanatory reports prepared by the committee of experts and submitted to the Committee of Ministers do not constitute instruments providing an authoritative interpretation of the text of the Convention and of the Supplementary Agreement, although they might be of such a nature as to facilitate the application of the provisions therein contained.

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General considerations

1. The European Interim Agreements on Social Security done in 1953, which are mainly concerned with equality of treatment for nationals of the Contracting Parties, were intended, from the outset, to be partial instruments only and, as their title indicates, provisional instruments. The member States of the Council of Europe left open the possibility of extending the Agreements to give non-nationals and migrants more complete and effective protection. Thus in 1959, it was decided to draft a multilateral convention to co-ordinate the social security legislations of the member States of the Council of Europe.

2. The diversity and complexity of the various national legislations on the subject, and the many differences between them, make co-ordination very difficult, and the rules adopted cannot be simple. This is all the more true since in the framework of the Council of Europe, account must be taken of:

- relations between legislations that provide contributory benefits, i.e. in the words of the Convention, those 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",

- relations between legislations that provide non-contributory benefits, i.e. in the words of the Convention, those benefits, "the award of which does not depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity", and

- relations between legislations of the two kinds mentioned above.

3. In these circumstances the Convention could not be too rigid. On the contrary some of the subject matter calls for flexibility. The Convention has thus been designed to be complete and flexible at the same time. Most of the provisions, including the basic provisions particularly dealing with equality of treatment, transfer of benefits and the adding together of periods. of insurance, residence, employment or other occupational activity, are to apply automatically as soon as the Convention enters into force. The application of other provisions, relating notably to sickness, unemployment and family benefits, is subject to the conclusion of bilateral or multilateral agreements.

4. In the drafting of the Convention, particular regard has been had to the Interim Agreements, which it is designed to replace in relations between the Contracting Parties, to International Labour Convention No. 118 on Equality of Treatment (Social Security), and to Regulation No. 3 of the Council of EEC on social security for migrant workers, and to the work on the revision of this last instrument.

Scope

5. The Convention applies to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;
(b) invalidity benefits;
(c) old age benefits;
(d) survivors' benefits;
(e) benefits in respect of occupational injuries and diseases;
(f) death grants;
(g) unemployment' benefits
(h) family benefits

6. This field of application covers all general and special schemes, whether contributory or non-contributory, including employers' liability schemes providing benefits referred to in the preceding paragraph. In the case of schemes set up under collective agreements which have been made compulsory by the national authorities, the condition in which the Convention shall apply may be determined by bilateral or multilateral agreements.

7. The Convention covers, in general, all nationals of any Contracting Party – and refugees or stateless persons resident in the territory of a Contracting Party – who are or have been subject to the legislation of one or more Contracting Parties, together with the members of their families and their survivors. The Convention is also applicable to the survivors of persons who, without having the nationality of a Contracting Party, were subject to the legislation of one or more of the Contracting Parties, provided these survivors are nationals of a Contracting Party.

Determination of the legislation applicable

8. In order to avoid overlapping of insurance cover, the Convention is based on the principle that only one legislation shall be applicable. In order to prevent possible conflicts of laws, the Convention provides as a rule that the legislation applicable is that of the Contracting Party in whose territory the gainful occupation is carried on. However, exceptions and special provisions are made, particularly as regards persons who are employed in the territory of one Contracting Party and are sent to work temporarily in the territory of another Contracting Party, international transport workers and workers who normally follow their occupation in the territory of two or more Contracting Parties, and self-employed persons.

Equality of treatment between nationals and non-nationals

9. The Convention affirms the principle of equality of treatment. However, as regards the application of the principle to non-contributory schemes, a Contracting Party may require nationals of other Contracting Parties to satisfy residence conditions, particularly where the amount of benefit is not related to periods of residence.

Payment of benefits abroad

10. The Convention provides that invalidity, old age, or survivors' benefits, pensions in respect of occupational injury or disease and death grants shall not be liable to reduction, modification, suspension, termination, or forfeiture by reason of the fact that the beneficiary resides in the territory of a Contracting Party other than that in which the institution liable for payment is situated. In general, it provides for the payment in the territory of each Contracting Party of such benefits due under the, legislation of another Contracting Patty. However, exceptions to this principle are allowed, among others, in the case of non-contributory schemes and certain special benefits. In this connection, the Convention envisages the possibility of departure from the general rule of total transferability in the case of non-contributory benefits whose amount does not depend upon the completion of the period of residence. Further, the Convention permits an exception to the principle of transferability in the case of certain special benefits, entitlement to which depends upon residence in the territory of the Contracting Party which pays them. (See points 77, 78 and 79 of this report.)

Adding together of periods to be taken into account for determining entitlement or calculating the amount of benefit

11. For the acquisition, maintenance or recovery of entitlement to benefit, and, where applicable, the calculation of benefit, the Convention provides for the adding together of all periods of insurance, residence, employment or other occupational activity completed by the person concerned and taken into consideration under the various national legislations.

Calculation of pensions

12. There are special provisions which prescribe the rules for calculating the amount of pension payable by each competent institution. The amount to be paid by each institution concerned is calculated by that institution on the basis of the ratio of the periods completed under its legislation to the total of the periods completed under the legislations of all the Contracting Parties concerned.

Application of the Convention to non-contributory pensions

13. Where a Contracting Party provides non-contributory pensions for its own nationals living in its own territory, the Convention applies to these pensions much in the same way as it applies to contributory pensions. It treats a period of residence in the territory of this Party as if it were an insurance period completed under the legislation of a Party having a contributory scheme of pensions. This applies not only to old age pension but also to invalidity pension

and survivors' pension. One result will be that a period of residence in a country providing non-contributory pensions may help a person to qualify for a pension in a country providing contributory pensions. Another result will be that non-contributory pensions, which are generally paid only at standard flat rates will, in some cases, be paid at reduced rates. For, if the person concerned has had not only periods of residence in the country providing non-contributory pensions, but also periods of residence or insurance in another country which has ratified the Convention, then the former country will pay a pension at a rate which is a fraction of its standard rate, the numerator of the fraction representing periods of residence in its territory and the denominator representing the total of all the periods of residence or insurance in the two countries. The same principle applies if there has been residence or insurance in a third country or in more than three countries, provided that all the countries have ratified the Convention.

14. There are two possible modifications of the rule set out in the previous paragraph for calculating the rate of pension. First, if the person concerned has had substantial gaps in his record of residence and insurance in the countries which have ratified the Convention, then a country which is liable to pay a non-contributory pension may reduce the standard rate of its pension before making the calculation. If the pension is for old age, the standard rate is reduced by one thirtieth for each year by which the total record is less than thirty years. If the pension is an invalidity or survivors' pension, thirty is replaced by a number equal to two thirds of the number of years between the age of sixteen and the date when the person concerned became incapable of work or died, as the case may be.

15. The second modification of the rule applies only where, without the help of the Convention, a person could have qualified for a pension in one of the countries concerned, and this pension would have been payable at a higher rate than the total of the pensions payable to him under the rule. In such a case he is entitled to have his total made up by that country to the level of the pension he would have received from that country without the help of the Convention.

16. There is also the exceptional case where a national of one Contracting Party claims a non-contributory pension under the legislation of another Party solely by virtue of residence in the territory of the latter Party, i.e., where there has been no residence in the territory of any other Party providing non-contributory pensions and no insurance under the legislation of any Party. In such a case the claim is determined on the basis of equality of treatment for nationals of the two Contracting Parties concerned. But the Party under whose legislation the claim is made may impose a prescribed period of residence in its territory as a condition for this equality of treatment. The period may be as long as ten years for old age pension or five years for invalidity pension or survivors' pension. Where the period of residence is at least one year but less than the prescribed period, a pension is payable at a reduced rate.

Relationship to other social security international instruments

17. As regards the persons to whom it applies, the Convention replaces former agreements binding two or more Contracting Parties. However, the Contracting Parties are fret to keep in force, as between them, any existing agreements or particular provisions thereof, by including them in Annex III to the Convention. But it should be noted that, as the ultimate aim is the general application of the Convention, such agreements or provisions should, as far as possible, be gradually eliminated.

18. The Convention does not affect:

- obligations under any convention adopted by the International Labour Conference,

- the provisions on social security in the Treaty of 25 March 1957 establishing the European Economic Community or in association agreements concluded under that treaty; or the measures taken for the application of those provisions.

19. However, the Convention will apply in all cases where the institution of a Contracting Party not a Member of the Communities is called upon to intervene and in cases which, for other reasons, are not covered by Regulations on social security of the Council of the European Communities. (1)

Thus the Convention could apply in the following cases:

1. the institution of a Contracting Party not a Member of the European Communities is called upon to intervene even where a national of a member State of the European Communities is in question;

2. the person concerned is a national of one of the Contracting Parties who has spent his working life wholly in member States of the European Communities but is not a national of any member State of the Communities;

3. the person concerned is a national of a Community member State who, having completed his whole working life in the member States of the Communities, has exercised therein at least one occupation subject to a social security scheme not affected by the Regulations on social security of the Council of the European Communities.

20. The Contracting Parties may, on the other hand, conclude with one another new conventions based on the principles of the Convention.

21. Furthermore, the Contracting Parties may extend to the nationals of all the Contracting Parties the provisions of conventions on social security which are maintained in force or of any new conventions on social security which they conclude at a later date.

Supplementary Agreement

22. A Supplementary Agreement has been drawn up in order to permit the application of the provisions in the Convention which are immediately applicable and to serve as a guide for the application of the provisions which only become applicable after the conclusion of separate bilateral or multilateral agreements.

(1) As regards this matter the Secretariat of the Council of Europe has received two communications from the Commission and from the Council of the European Communities, as a result of which:

(i) the provisions of Regulation No. 3 in respect of persons which are covered by this Regulation replace the provisions of all multilateral social security conventions binding two or more member States of the Communities and one or more non-member States, in so far as they concern cases which do not involve for their settlement a scheme of one of the latter States;

(ii) this permits the conclusion that by the operation of these provisions and those of Article 6, paragraph 2, of the European Convention on Social Security, a perfect fit between the two instruments is ensured;

(iii) moreover, during the work undertaken by the European Communities in revising the Regulations on social security of the Council of the European Communities, account has again been taken of the need to avoid, both now and in the future, all conflict between the Regulations of the Communities and the European Convention on Social Security.

Commentaries on the provisions of the Convention

TITLE I – General provisions

Article 1 – Definitions

23. This article contains the definitions of the main terms used in the Convention. The definition of the following terms requires some clarification:

– "legislation" (sub-paragraph (c))

24. This general definition covers laws, regulations and other statutory instruments. It appears, moreover, in certain ILO Conventions. However, as is clear from Article 2, paragraph 2, schemes established by means of collective agreements which are made compulsory by decision of the public authorities come within the scope of the Convention only if there are bilateral or multilateral agreements between Contracting Parties.

– "social security convention" (sub-paragraph (d))

25. This term is broadly defined, and covers any bilateral or multilateral instrument of social security as well as subsidiary agreements of any kind.

26. The simultaneous usage of two tenses in the expression "are, or may subsequently be bound" is determined by the fact that the provision covers all present or future international instruments which bind, or may subsequently bind at least two Contracting Parties. This expression covers also any instruments which bind Contracting Parties and other States.

– "residence" (sub-paragraph (i)) and "temporary residence" (sub-paragraph (j))

27. The words "for the purposes of this Convention" apply to all the definitions given in this article. This means that the definitions of the terms "residence" and "temporary residence" apply only for the purposes of the Convention itself. Where only domestic laws apply, the definitions in the national legislation are in no way modified.

– "worker" (sub-paragraph (m))

28. The definition of the term "worker" was included solely for practical reasons; namely to avoid repeating, in each appropriate provision, the words "an employed person or a self-employed person or a person treated as such under the legislation of the Contracting Party concerned". These expressions should bc interpreted by each Contracting Party according to its own national legislation.

– "refugee" (sub-paragraph o))

29. This definition reflects the provisions of the Geneva Convention of 18 July 1951, as amended by the Protocol of 31 January 1967, although time and geographical limitations prescribed in these two instruments do not apply. When this sentence was being drafted, it seemed appropriate, for the purpose of applying the European Convention on Social Security, to give as wide a definition as possible for the term "refugee".

30. The fact that the definition of the term "refugee" given in the Geneva Convention of 28 July 1951, as amended by the Protocol of 31 January 1967, has been inserted in the Convention, cannot be deemed as affecting the position of any member State of the Council of Europe towards both these instruments. The definition given in the European Social Security Convention is, in fact, strictly limited to the implementation of that Convention.

Accordingly, any State which has accepted the European Convention on Social Security will not be obliged to apply the definition of the term "refugee" given in Article 1, sub-paragraph (o) of the Convention in any context other than the said Convention.

– "stateless person" (sub-paragraph (p))

31. This definition is reproduced from the Convention relating to the Status of Stateless Persons done at New York on 28 September 1954, which contains in this respect the following provisions:

> "1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.
>
> 2. This Convention shall not apply:
>
> > (i) to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance, so long as they are receiving such protection or assistance;
> >
> > (ii) to persons who are recognised by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
> >
> > (iii) to persons with respect to whom there are serious reasons for considering that:
> >
> > > (a) they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
> > >
> > > (b) they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
> > >
> > > (c) they have been guilty of acts contrary to the purpose and principles of the United Nations."

– "periods of insurance" (sub-paragraph (s))

32. This definition was included for reasons of convenience in order to avoid the need to indicate, in each appropriate provision, that the periods involved may be periods of contributions, periods of employment, periods of occupational activity or periods of residence, or any other periods assimilated to the previous ones in so far as they are recognised as equivalent to periods of insurance under the legislation of a Contracting Party.

– "family benefits" (sub-paragraph (w))

33. The term "family benefits" means any benefits in kind or in cash designed to offset the costs of family maintenance. It includes, therefore, in addition to family allowances in the strict sense (periodical cash benefits granted according to the number and age of children), other family benefits provided under certain legislations such as pre-natal allowances, allowances for families with only one wage-earner, allowances for members of the family other than children and special study allowances.

34. The maternity allowances mentioned in Annex II to the Convention are excluded because of their particularly demo- graphic character. Also excluded from the definition of the term are the additional allowances for children paid in addition to pensions by a number of European legislations. Although serving the same purpose as family allowances, such additional allowances for children are dealt with in the chapter concerning pensions of which they form an integral part. That is why under Article 1 (v) of the Convention the term "pension" has been made to cover any benefits that might be included under it, that is to say any supplement whatsoever, whether revaluation allowances or supplementary allowances.

– "contributory" and "non-contributory" (sub-paragraph (y)); "benefits granted under transitional arrangements" (sub-paragraph (z))

35. The definitions of these terms are identical with those accepted at the 46th Session of the International Labour Conference in 1962, on the occasion of the adoption of ILO Convention No. 118.

Article 2 – Scope-legislation and schemes

This article indicates the legislation and schemes covered by the Convention.

Paragraph 1

36. This paragraph lists the legislation on the branches of social security to which the Convention is applicable. It should be noted that sub-paragraph (h) covers all legislation on family benefits as defined in sub-paragraph (w) of Article 1.

Paragraph 2

37. This paragraph specifies all the social security schemes involved viz.:

- general schemes applicable without distinction to all the persons under consideration, e.g. employed persons, the economically active population, or residents;

- special schenies applicable solely to a particular occupational category, whether the categorv concerned is covered by the general scheme or not;

- employers' liability schemes, Le. those which impose a direct liability on the employer. In this connection it was agreed that ship-owners should be regarded as employers for the purposes of the Convention (paragraph 3).

38. The Convention is applicable to both contributory and non-contributory schemes as defined in sub-paragraph (y) of Article 1.

39. The second sentence of paragraph 2 refers to schemes established by means of collective agreements and made compulsory by decision of the public authorities-schemes which are common in certain countries. Such schemes will come within the scope of the Convention only by means of bilateral or multflateral agreements to that effect concluded between Contracting Parties.

Paragraph 3

40. This paragraph provides that the special provisions of Title III shall not prejudice the provisions of any legislation governing the liabilities of ship-owners. Ship-owners' liability schemes, relating in particular to sickness, occupational injury or disease, death, or unemployment, are therefore governed by the general provisions of the Convention; but are not affected by the provisions of the corresponding chapters of Title III, since ship-owners are in a position to meet these liabilities directly, no matter in which Contracting Party's territory the beneficiary is to be found.

Paragraph 4

41. This paragraph provides that the Convention does not apply to social and medical assistance, to benefit schemes for war victims, or to special schemes for civil servants or persons treated as such. But, under Article 4, paragraph 1, sub-paragraph (c) of the Convention, civil servants and persons treated as such are allowed to benefit frorn the provisions of the Convention if they are subject to any legislation to which the Convention applies.

Paragraph 5

42. Since the first paragraph of the article provides that all legislation relating to social security shall be covered by the Convention, it was essential to include paragraph 5, which excludes any legislative instrument giving statutory effect to a convention concluded by a Contracting Party with a third State.

For example, under the bilateral agreement concluded between the United Kingdorn and Australia, anyone who retires to the United Kingdorn after making his career in Australia is entitled to a United Kingdorn old age pension as though he had paid contributions in the United Kingdom during the periods when he was resident in Australia. If the Convention were to be applied to the legislation giving effect to that bilateral agreement, the United Kingdorn would be obliged to pay this pension if the beneficiary transferred his residence to the territory of another Contracting Party.

Article 3 – Notification of legislation and schemes covered by Article 2

Paragraph 1

43. To enable the actual extent of the scope of the Convention to be known, provision is made for each Contracting Party to give notice of the legislation and schemes that are covered in Article 2. This information is reproduced in Annex II, which is nevertheless no more than a guide.

The Irish scheme of unemployment assistance is a particular case in point. This is a scheme of social assistance, not social security, in that entitlement to payments under it is not dependent on the recipient havng a prior record of insurable employment, and is subject to a means test. It is not a condition for the receipt of unemployment assistance that the applicant must have had any employment at all, whether insurable or not, at any time prior to application. Unemployment assistance is not limited in its field of application to wage-earners or workers. Able-bodied persons from cighteen to seventy years of age who never worked, for wages or otherwise, such as school leavers, or under-employed farmers on uneconomic holdings can qualify. The scheme is financed from general taxation and is non-contributory. Title to unemployment assistance does not derive from. any contributions paid to any fund by the applicant or an employer or by the State. It is clearly, therefore, a social assistance scheme and as such would normally have no place in a convention concerried purely with social security.

The position is similar as regards the Irish scheme of non-contributory old age pensions and non-contributory widows' and orphans' pensions. In view of the fact, however, that the European Convention on Social Security is not solely concerned with the protection of insured migrant workers but also with all other nationals of member States, including farmers and other self-employed persons, Ireland agreed exceptionally to include in this Convention the legislation concerning the above-mentioned schemes in order to demonstrate that all nationals of other Contracting Parties, and not merely insured migrant workers, will receive full equality of treatment with its own nationals in the field of social assistance as well as that of social security. This is, in fact, already the case in a very large measure, there being only a relatively small difference in the qualifying period of residence for non-contributory old age pensions applicable to non-nationals and that applicable to nationals. Treland's agreement to include the legislation relating to these schemes in the Convention was subject to the condition that payments under them canne bc made outside the confines of the national territory.

Paragraph 2

44. Any amendments to Annex II must be notified to the Secretary General of the Councii of Europe in accordance with Article 81, and will take effect under the conditions laid down by Article 73.

Article 4 – Persons covered by the Convention

Paragraph 1

Sub-paragraph (a)

45. As pointed out under point 7 of the "General considerations", the Convention covers those nationals of any of the Contracting Parties and those refugees and stateless persons, as defined in Article 1, sub-paragraphs (o) and (p) of the Convention, resident in the territory of any Contracting Party who are or have been subject to the legislation of any such Party, as well as to members of their families and to their survivors.

Sub-paragraph (b)

46. The provisions of the Convention are also applicable to the survivors of any person who was not a national of any of the Contracting Parties but was subject to the legislation of one of them, provided that the survivor is a national of one of the Contracting Parties, a refugee or a stateless person.

Sub-paragraph (c)

47. Moreover, the Convention covers civil servants and persons treated as such under the legislation of the Contracting Party concerned, if there are no special statutory provisions applicable to them.

Paragraph 2

48. This paragraph was framed in the light of the provisions of the Vienna Conventions on Diplomatic and Consular Relations. Among persons covered by these two treaties, the scope of the European Convention is limited to members of the service staff of diplomatie missions or consular posts and persons employed in the private service of officials of such missions or posts, as well as to members of the administrative and technical staff of a diplomatic mission who are either nationals of, or permanent residents in, the receiving State. Article 17 of the European Convention governs the situation of such staff.

49. The European Convention is not applicable to other persons covered by the two Vienna Conventions; this is in line with the exemptions made for them in those two treaties. It should be noted that the existence of different provisions in the European Convention on Social Security and in the two Vienna Conventions does not and will not raise problems for countries having already ratified the Vienna Conventions or which ratify them in the future and which also accede to the European Convention on Social Security. This is because Article 33, paragraph 5 of the 1961 Vienna Convention and Article 73, paragraph 2 of the 1963 Vienna Convention, quoted below, allow derogation from the social security provisions which they contain:

> "Article 33, paragraph 5
>
> The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.
>
> Article 73, paragraph 2
>
> Nothing in the present Convention shall preclude States from concluding international agreements confirming or sup- plementing or extending or amplifying the provisions thereof."

50. It should also be noted that the main object of the European Convention is to co-ordinate national legislation on social security, whereas the articles on social security in the two Vienna Conventions lay down conditions for exemption from the social security legislation of any given State.

51. The experts recognised that if, for example, a diplomat is excluded from the scope of the Convention by Article 4, paragraph 2, he may still be able to invoke the Convention in respect of entitlement to social security benefit on some other ground.

Article 5 – Replacement of other conventions on social security by the Convention

52. Paragraph 1 represents a compromise between two opposing views expressed during the drafting of the Convention, on the one hand, that the Convention should automatically supersede previous conventions, and, on the other, that all such conventions should remain in force. For reasons of clarity and simplicity it was laid down that the Convention, in respect of the persons to which it applies, should supersede all conventions between two or more Contracting Parties and any convention between Contracting Parties and a third State in respect of cases calling for no action by any institution of that third State. There was general agreement in favour of a single convention; nevertheless, provision was made to keep certain conventions in force by agreement between the parties concerned; this is done in Article 6. It should be noted that only the social security conventions binding on Contracting Parties to, the Convention may cease to be in force under this provision. In other words, a convention binding on two or more member States of the Council of Europe which has not been included in Annex III will remain in force until the Convention has come into force between those States.

Article 6 – Exceptions to the principle established in Article 5

Paragraph 1

53. This paragraph confirms the fact that the Convention does not affect obligations under the conventions adopted by the International Labour Conference; those are standard-setting instruments with, in general, different aims from the co-ordinating purpose of this Convention. Furthermore, obligations under the ILO Conventions are as a rule binding both on member States of the Couricil of Europe and on non-member States.

Paragraph 2

54. This paragraph contairis a clause designed to avoid clashes between the Convention and the social security provisions of the Rome Treaty.

Paragraph 3

55. This paragraph provides that, notwithstanding the general replacement of previous conventions as provided in Article 5 paragraph 1, Contracting Parties may keep in force provisions, of conventions on social security to which they are bound, by including them in Annex III of the Convention and provisions of agreements for the application of such conventions by mentioning them in an Annex to the Supplementary Agreement for the application of the Convention.

56. With regard to the time allowed to member States to include in Annex III the conventions which they wish to maintain in force, the position is that the initial content of the Annexes, established by common agreement by those negotiating the Convention, constitutes a balanced structure adopted in the decision of the Committee of Mnisters opening the Convention for signature. However, there is nothing in Articles 5 or 6 to indicate that no other convention on social security may be added to Annex III after the decision to open the European Convention for signature.

Any other interpretation would overlook the fact that Article 6, paragraph 5, relates to the provisions of social security conventions already included in Annex III rather than to the possibility of adding further conventions. Nevertheless, it should be noted that after the Convention has been opened for signature, before it has entered into force (the procedure laid down in Article 73 for amending Annexes being inapplicable), the content of the Annexes can be amended only by unanimous decision of the Committee of Ministers at the request of the interested member States.

57. After the entry into force of the Convention, interested member States may at latest propose the inclusion of a convention on social security in Annex III when the last State becoming Party to the Convention deposits its instrument of ratification or acceptance, as the Convention will enter into force, as between that State and the other Contracting Parties, three months after the date on which the instrument was deposited. Similarly an amendment or amendînents to Annex III would not officially take effect until the expiry of the three-month period prescribed by Article 73, paragraph 2, for notification of opposition. Thus, if a proposal to amend Annex III in order to include a new convention on social security were made after the deposit of the instrument of ratification, the Convention would enter into force for the State in question before the expiry of the three-month period during which opposition to such a proposal may be notified and, consequently, by virtue of Article 5, paragraph 1, the Convention would be substituted for the earlier convention.

58. This paragraph 1 was included in Article 6 for the following reasons. It is not desirable that all conventions previously concluded should be superseded without any transitional period. Furthermore, there are certain multilateral and bilateral conventions which may be more favourable or more appropriate than the Convention; this raises the question of acquired rights and rights in course of acquisition, both of which must be maintained.

Paragraph 4

59. The scope of this paragraph can be explained as follows: Firstly, the conventions which may be kept in force involve, by definition, a limited number of Contracting Parties who canne invoke such conventions in cases outside their scope, e.g. a case involving action by a State which is not a Party to, the Convention in question. Secondly, the scope of the Convention is very broad, whereas that of the conventions kept in force may be limited. It was necessary therefore to include a safeguard to the effect that the Convention should prevail wherever it went further than the earlier conventions.

Paragraph 5

60. It should be noted that it will not be possible, after the conclusion of the Convention, to make additions to Annex III. This is because any provisions of conventions not included in that Annex will have lost their validity. However, it was necessary to give Contracting Parties means of placing on record any amendments made to the provisions kept in force and of deleting provisions they had originally decided to maintain; the long-term aim being that the new Convention should supersede existing conventions subject to the Parties' agreement.

Article 7 – New agreements

Paragraph 1

61. This paragraph reserves to the Contracting Parties the right to conclude with each other new social security conventions affecting their mutual obligations, subject to the condition that such conventions must be founded on the principles of the Convention. It in no way limits, however, the right of any Contracting Party to conclude with States which are not Contracting Parties to the Convention new social security conven- tions based on such principles as the Parties to such conventions may think fit, to the extent that these instruments do not affect mutual obligations of Contracting Parties to the Convention.

Paragraph 2

62. Under this paragraph the Contracting Parties must give notice to the Secretary General of any such conventions which they conclude, and he will inform all the Contracting Parties in accordance with Article 81.

Article 8 – Equality ot treatment

Paragraph 1

63. This paragraph establishes the principle of equality of treatment for persons to whom the Convention applies, subject only to residence in the territory of a Contracting Party. The opening words "unless otherwise specified" are intended to remove any ambiguity concerning the connection between this general provision and certain special provisions of the Convention. In the case of conflict between general and special provisions, the latter shall prevail.

Paragraph 2

64. This paragraph provides for a minimum period of residence, the reason for which is the special character of non-contributory benefits where the amount is not determined by the length of residence. Such benefits play a very important role in Sweden and Denmark. The formula adopted is based on ILO Convention No. 118. The provisions concerning these benefits are intended to apply only where the working life of the person concerned has been spent wholly in one country. If the working life has been spent in two or more countries, then, under Article 27 of the Convention, the provisions of Chapter 2 of Title III are applicable.

65. The grant of non-contributory benefits of an amount independent of the length of residence may be made conditional on a minimum period of residence in the territory of the Contracting Party concerned. Thus, in order to receive maternity or unemployment benefits from a particular Contracting Party, a person may be required to have resided in its territory for six months immediately preceding the lodgment of the claim. For invalidity benefits the period required may be five consecutive years immediately preceding the lodging of the claim; for survivors' benefits, the period may be five years' residence by the deceased immediately preceding his death. For old age benefits the period may be ten years between the age of sixteen and the pensionable age, and the Contracting Party concerned may also stipulate that

five of these ten years shall immediately precede the lodging of the claim. These conditions are based on the need for a link between the beneficiary and the State paying the pension. Moreover they had to be included to prevent abuse.

Paragraph 3

66. As Article 8, paragraph 2, deals only with full pensions granted when residence conditions are fulfilled, paragraph 3 was included to provide protection for persons who fail to satisfy these conditions but have nevertheless completed at least one year of residence. Such persons will be entitled to reduced pensions calculated by reference to the full pension. As with full pensions, this provision is intended to apply normally where the working life has been spent wholly in one country.

Paragraph 4

67. This paragraph provides that the Contracting Parties should state in Annex IV the benefits to which the provisions mentioned above are to apply.

Paragraph 5

68. Under this paragraph notice of any amendment to the above Annex is to be given in accordance with the procedure set out in Article 81.

Paragraph 6

69. The principle of equal treatment laid down in Article 8, paragraph 1 will not apply to national provisions. concerning the participation of protected persons in social security administration or membership of social security tribunals.

Paragraph 7

70. This provision is based on ILO Convention No. 118. In the context of equality of treatment it authorises Contracting Parties to adopt special measures relating to participation in voluntary insurance or optional continued insurance by persons not residing in their territory and to entitlement to benefits under transitional arrangements. However, such special conditions must be mentioned in Annex VII, the contents of which are the result of agreement. Two examples may give a clearer idea of the kind of special situation that has had to be taken into account:

1. As far as old age is concerned, Netherlands legislation covers all that country's residents. When a person leaves the Netherlands he may remain subject to that legislation, but the law stipulates that in that case, instead of having his contributions calculated on the basis of his income (which is the normal system) he shall pay the maximum rate. A Netherlands citizen residing abroad can nevertheless furnish evidence that his income is less than the figure corresponding to the maximum contribution. In view of the difficulty of checking this kind of evidence, the Netherlands Government does not wish to give the same right to foreigners, who, in all cases where they have elected to subscribe to Netherlands optional continued insurance but reside outside the country, must pay the maximum contribution.

2. The French elderly employed persons' allowance is a fixed amount, payable, subject to a means test, to French workers who are unable by reason of advanced age to benefit from legislation on old age insurance. Under Annex VII a foreigner may receive the allowance only if he can show that he has resided in France for at least ten years between the age of sixteen and the qualifying age for payment, including five consecutive years immediately preceding the submission of his claim.

Article 9 – Extension of conventions remaining in force

71. This article provides that the provisions of conventions which Contracting Parties have decided to keep in force between themselves (by including them in Annex III) or of conventions concluded in accordance with Article 7 may, by agreement among these Parties, be extended to the nationals of all Contracting Parties.

Paragraph 1

72. This paragraph provides that the provisions of social security conventions which are kept in force by their inclusion in Annex III to the Convention can be made to apply, by agreement between the States bound by these conventions, to nationals of the other Contracting Parties.

Paragraph 2

73. The provisions of conventions remaining in force whose application is extended to the nationals of all Contracting Parties are to appear in Annex V.

Paragraph 3

74. The Contracting Parties are to give notice if they wish to extend the conventions concluded by virtue of Article 7. In this case the provisions of such conventions will be registered in Annex V.

Paragraph 4

75. This paragraph sets out the procedure to be followed in amending Annex V.

Article 10 – Admission to voluntary insurance or optional continued insurance

76. This article provides that where the legislation of one Contracting Party makes admission to voluntary insurance or optional continued insurance conditional upon the completion of periods of insurance, periods of insurance completed under other legislation shall be taken into account, as well as periods of residence after the age of sixteen in States with a non-contributory scheme [(1)]. This article enables workers to have periods of insurance, and even periods of residence, completed in the territory of any of the Contracting Parties taken into account for the purpose of admission to a voluntary or optional continued insurance.

Article 11 – Payment of pensions and death grants in the territory of the Contracting Parties

Paragraph 1

77. This paragraph provides that certain cash benefits (pensions and death grants) payable under the legislation of one or more Contracting Parties shall in no way be affected by the fact that the beneficiary resides in the territory of a Contracting Party other than that in which the institution liable for payment is situated. The words "unless otherwise specified in this Convention", were included in paragraph 1 in order to remove any ambiguity concerning the connection between the general rule stated here and the special provisions concerning the payment of pensions in cases where a worker has been covered by several systems.

(1) The age of sixteen mentioned here is an arbitrary age lirnit which has been chosen in view of the fact that, generally, it is at this age that compulsory education comes to an end in the member States of the Council of Europe and young people begin their working lives.

Paragraph 2

78. This paragraph sets out an exception to the principle of transfer in full stated in paragraph 1 of this article. The exception concerns non-contributory benefits where the amount does not depend on the completion of periods of residence. The aim is to fix the amount of such benefits payable where the persons concerned reside in the territory of a Contracting Party other than that in which the institution liable for payment is situated.

Paragraph 3

79. Under this paragraph certain special benefits closely dependent on residence in the territory of the Contracting Party paying them need not be transferred. The Contracting Parties specify in Annex VI (the contents of which are the result of agreement) those benefits in respect of which they avail themselves of this option, e.g. supplementary allowances from, the *Fonds national de solidarité* in France, non-contributory old .age pensions and non-contributory widows' and orphans' pensions in Ireland, and allowances for helpless persons in Switzerland.

Paragraph 4

80. This paragraph sets out the procedure to be followed in amending Annex VI.

Paragraph 5

81. As the Convention provides that as a rule the theoretical amount of pensions shall depend on the total of insurance or residence periods, the rule contained in this paragraph is justified by the fact that it might not be in the beneficiary's interest to have contributions under compulsory insurance repaid to him while he was still insured in another State, since the periods over which such contributions were paid and the periods of insurance completed in States not Contracting Parties could not then be added together for the purpose of award of benefit when the risk materialised.

Paragraph 6

82. This paragraph deals with the payment of benefit in the territory of States not Parties to the Convention. It represents a compromise based on Article 8. There were two schools of thought. The first one favoured application of the principle of equal treatment to all nationals of Contracting Parties, even those residing in third States; the second demanded residence in the territory of a Contracting Party. It was finally decided to include a reference to transfer to third States, though with a mention that this should be dealt with by bilateral or multilateral agreement.

Article 12 – Changes in rates of benefit

83. Any change in the rates of benefit payable under the legislation of a Contracting Party must apply to benefit payable under that legislation by virtue of the Convention.

Article 13 – Overlapping of benefits

Paragraph 1

84. This paragraph provides that, apart from benefits for invalidity, old age, survivors or occupational disease which are awarded in accordance with the provisions of Article 29 or sub-paragraph (b) of Article 47, the Convention is not intended to confer or maintain entitlement to several benefits relating to one and the same period of compulsory insurance.

85. The exception made in respect of benefits for invalidity, old age, survivors or occupational disease, which are awarded by virtue of the Convention, is based on the fact that such cases do not involve payment of separate benefits but simply of different portions of a composite pension.

Paragraph 2

86. This paragraph makes it possible, where there is overlapping of one benefit with other benefits or income, to apply provisions for reduction or suspension under the legislation of one Contracting Party even in respect of benefits or income received in another country except in the case of benefits for invalidity, old age, survivors or occupational disease awarded in accordance with Article 29 or Article 47 (b) of the Convention by the institutions of two or more Contracting Parties.

TITLE II – Provisions which determine the legislation applicable

87.The provisions of Title II determine the legislation applicable. In the case of compulsory insurance there should, in principle, be one legislation and only one. This avoids positive conflicts, i.e. where the legislation of two Contracting Parties would apply, and negative conflicts, i.e. where no legislation would apply. For example, in the case of a worker residing in a State where membership of the social security scheme is conditional upon his following an occupation and/or of a worker following an occupation in a State where membership is determined by residence, no legislation shall apply solely by virtue of national law. Conversely both legislations might apply to one and the same worker. In such cases the Convention determines which legislation shall alone apply; in principle it is to be that of the Contracting Party in whose territory the workers occupation is being followed. Lastly, it should be noted that the State whose legislation applies will take account, in particular for the purpose of calculating contributions, of any occupation followed wholly or partly in one or more other countries (see also point 101 of this explanatory report).

Article 14 – General rules

88. This article lays down the main principles governing the legislation applicable. The article is concerned not only with the rights and obligations of the worker but also with those of the employer. As a general rule, the legislation applicable is that of the Contracting Party in whose territory an occupation is being followed regardless of the scope of the protection resulting from such legislation. Thus:

(a) Employed persons are covered by the legislation of the State where they work, even if they reside, or their employer has his residence or principal place of business, in the territory of another Contracting Party;

(b) Seamen, whether employed or self-employed, are subject to the legislation of the Contracting Party whose flag is flown by the ship in which they are gainfully occupied;

(c) Self-employed persons are subject to the legislation of the State in which they follow their occupation, even if they reside in the territory of another Contracting Party;

(d) Civil servants and persons treated as such are subject to the legislation of the Contracting Party in whose administration they are employed.

Exceptions to this general rule are set out in the next article.

Article 15 – Exceptions and special cases

89. This article sets out exceptions and modifications to the rule that the legislation applicable is that of the country where the worker follows his occupation. In particular such exceptions have had to be made for persons working temporarily in the territory of another State, or normally in the territory of several States.

Paragraph 1

90. This paragraph states the exceptions to the rule concerning employed persons set out in Article 14 (a).

(a) Employed persons sent to work in another State

91. Employed persons sent by an undertaking to, work in the territory of another Contracting Party remain subject to the legislation of the Contracting Party to which the undertaking belongs, provided that the duration of the work to be carried out for that undertaking in the other State does not exceed twelve months and that they are not sent to replace other employees who have completed their period of work abroad (sub- paragraph (a) (i)). Subject to the agreement of the competent authority of the State to which the employee is sent, or of the body designated by that State, the legislation of the employer's State continues to apply until completion of the work abroad if, by reason of unforeseen circumstances, it extends beyond twelve months. In this connection the terrn "regular" in paragraph 1 (a) (i) is to be interpreted broadly. For example, it is not to prevent an undertaking from engaging staff in its own country specifically for some work in another State.

(b) Employed persons working in international transport

92. Employed persons working in international transport are subject to the legislation of either the Contracting Party in which the undertaking which employs them bas its principal place of business, or the Contracting Party in which the undertaking maintains the branch or permanent agency at which they are employed, or the Contracting Party in whose territory they reside. These provisions are taken word for word from the European Convention concerning the Social Security of Workers engaged in International Transport concluded under the auspices of ILO on 9 July 1956.

(c) Other employed persons who normally work in the territory of more than one State

93. Paragraph (c) deals with workers other than those in international transport who normally follow their occupation in the territory of two or more Contracting Parties, e.g. commercial travellers and itinerant workers. Such persons are subject to the legislation of the State in which they reside if part of their work is performed there or if they work for several undertakings or employers having their principal places of business or their residences in the territory of different Contracting Parties. In other cases they are subject to the legislation of the State in whose territory the principal place of business of the undertaking or the residence of the employer is situated.

(d) Persons employed by frontier undertakings

94. Workers employed by an undertaking which lies astride the common frontier of two Contracting Parties are subject to the legislation of the State in whose territory the undertaking has its principal place of business.

Paragraph 2

95. This paragraph sets out the exceptions to the rule stated in Article 14 (b) (that the legislation of the Contracting Party whose flag is flown by the ship applies); they concern employed and self-employed persons.

96. Sub-paragraph (a) provides that the provisions of Article 15, paragraph 1 (a) concerning employed persons sent to work in another State shall apply, *mutatis mutandis*, to employed persons who normally follow their occupation on board a ship flying the flag of one Contracting Party or in the territory of that Contracting Party who are sent to work on board a ship flying the flag of another Contracting Party. Such persons remain subject to the legislation applicable to the undertaking which has sent them to work on its behalf on board the latter ship, in the same way as employed persons sent to work in another State, the conditions governing whom are set out in Article 15, paragraph 1 (a) (i).

97. Similarly, under sub-paragraph (b) employed or self-employed persons who, although not members of the crew, work on board a ship flying the flag of another Contracting Party in the territorial waters or in a port of another Contracting Party but are subject to the legislation of this latter Contracting Party.

98. Sub-paragraph (c) deals with a worker employed on board a ship and paid by a person or an undertaking other than the ship owner. If that person has his place of residence, or the undertaking has its principal place of business in the State where the worker resides, that State's legislation applies even if the ship on which the worker is employed is flying a different flag.

Paragraph 3

99. This paragraph sets out the exceptions to the rule laid down in Article 14 (c) that self-employed persons are subject to the legislation of the Contracting Party in whose territory they follow their occupation.

100. Sub-paragraph (a) deals with self-employed persons residing in the territory of a Contracting Party other than that in which they follow their occupation. The exception in sub-paragraph (a) (i) covers the case where the second Contracting Party, (that in whose territory the person is following his occupation and whose legislation would normally apply) might not have any legislation relating to self-employed persons. In order to protect the worker in such a case, the legislation of his country of residence will apply. Sub-paragraph (a) (ii) covers the case where each of the two States applies its legislation to self-employed persons who reside in its territory, even if they follow their occupation in other countries; in such a case, the legislation of the State of residence will apply.

101. Sub-paragraph (b) deals with self-employed workers following their occupation in the territory of several Contracting Parties. Such workers are to be subject to the legislation of the Contracting Party in whose territory they reside if they work partly in that State, or if its legislation can apply to them by the mere fact of residence. Thus in the case of a farmer residing in the territory of a Contracting Party but working on land on both sides of that Contracting Party's frontier with another Contracting Party, the competent authorities in the country of residence, to whose legislation the farmer is subject, will, in accordance with Article 69, paragraph 1, take account in determining the amount of his contributions, of the income he derives from that part of his farm which is on the other side of the frontier. Although the farmer is insured in only one country his earnings in the two countries are taken into account.

102. Sub-paragraph (c) deals with self-employed workers in the situation described under sub-paragraph (b) to whom the legislation of the State of residence cannot apply either because they follow no part of their occupation there or because that State has no legislation applicable to self-employed persons. In such cases the Convention provides that self-

employed persons "shall be subject to the legislation jointly agreed upon by the Contracting Parties concerned or by their competent authorities".

Paragraph 4

103. This paragraph sets out a rule which was included in previous conventions. Its purpose is to permit the application of the legislation of the country of residence to an employed.or self-employed person working in the territory of another Contracting Party.

Article 16 – Derogations from the rules sel out in Articles 14 and 15: voluntary insurance or optional continued insurance

Paragraph 1

104. The effect of this paragraph is that Articles 14 and 15 apply only to compulsory insurance.

Paragraph 2

105. This paragraph provides that where the application of the legislation of two or more Contracting Parties may result in affiliation to a compulsory insurance scheme and at the same time permit membership of one or more voluntary insurance or optional continued insurance schemes, the person concerned shall be subject to the compulsory scheme only. However, in respect of invalidity, old age or death (pensions) the Convention does not affect the legislation of any Contracting Party which allows double affiliation to compulsory insurance and voluntary or optional continued insurance schemes.

Paragraph 3

106. This paragraph precludes membership of two or more voluntary insurance or optional continued insurance schemes and deals with cases where simultaneous membership of such schemes in more than one State would be possible, as, for instance, where a worker wishes to keep his voluntary or optional continued insurance in two States in which he had previously worked. In such cases only insurance taken out in the territory of the Contracting Party where he resides is permitted. If he does not reside in the territory of any of the Parties in question, he can avail himself of his right under the Convention to choose one of the systems that allows him to take out such insurance.

Article 17 – Members of the service staff of diplomatic missions or consular posts and persons employed in the private service of officials of such missions or posts

Paragraph 1

107. This paragraph confirms that members of the service staff of diplomatic missions or consular posts and persons employed in the private service of officials of such missions or posts are covered by the Convention. This is the effect of Article 14 (a), under which such persons are as a rule subject to the social security scheme of the country where they are employed. The paragraph was included to clarify the exception stated in paragraph 2.

Paragraph 2

108. This paragraph allows the persons in question, provided they are nationals of the State represented by the diplomatic mission or consular post, to opt to be covered by that State's legislation. However, in order to avoid administrative complications, this right of option can only be exercised once, either within three months of the Convention's entry into force or on the date on which the person concemed is engaged by the mission or post, or in the private service of an official of the mission or post, as the case may be. It is not retroactive.

Article 18 – Possible derogations from Articles 14 to 17

Paragraph 1

109. In the interest of persons affected by the provisions of Articles 14 to 17, this paragraph enables the competent authorities of two or more Contracting Parties to provide by agreement for exceptions to these provisions.

Paragraph 2

110. This paragraph was included to meet constitutional requirements existing in certain member States of the Council of Europe. It provides that the exceptions mentioned in paragraph 1 can only be made at the request of the persons concerned and, where appropriate, of their employers. It also provides that the competent authority of the Contracting Party whose legislation is applicable must confirm that the persons in question are no longer subject to its legislation and will in future be subject to the legislation of another Contracting Party.

111. Certain systems include the principle of double affiliation of workers who are in paid employment and also work on their own account. Articles 14 and 15 do not cover such situations, and double affiliation is then possible. However, the position of a worker who is self-employed in one country and is also in paid employment in another may be settled by agreement between the two Contracting Parties concerned by virtue of Article 18, paragraph 1.

TITLE III – Special provisions governing the various categories of benefits

Chapter 1 – Sickness and maternity

112. This chapter contains special provisions concerning sickness and maternity benefits. It should be noted that the application of certain provisions in this chapter – Articles 20, 21, 23 and 24 – and of certain provisions in the chapters on unemployment and family benefits, is subject to the conclusion of bilateral or multilateral agreements.

Article 19 – Acquisition, maintenance or recovery of entitlement to benefits

Paragraph 1

113. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of entitlement to benefits subject to the completion of periods of insurance, account shall be taken, as necessary, of periods of insurance completed under the legislation of any other Contracting Party and, where appropriate, of periods of residence completed after the age of sixteen under non-contributory schemes of any other Contracting Parties.

Paragraph 2

114. Similarly, this paragraph provides that where any legislation makes admission to compulsory insurance conditional upon the completion of periods of insurance account shall be taken, as necessary, of periods of insurance completed under the legislation of any other Contracting Party, and, where appropriate, of periods of residence completed after the age of sixteen under non-contributory systems of any other Contracting Party. This arrangement, which is identical to the one made under Article 10 concerning admission to voluntary insurance or to optional continued insurance, had to be included in the Convention to cover certain special features in national legislations: for instance cases may arise in which the admission of pensioners to sickness insurance schemes might be subject to some condition of previous insurance.

Article 20 – Provision of benefits to persons residing in the territory of a Contracting Party other than the competent State

Paragraph 1

115. This paragraph indicates the persons concerned and the conditions on which they may receive benefits in kind and in cash. It covers persons residing in the territory of a Contracting Party other than the competent State, particularly frontier workers, seasonal workers, persons following an occupation in the territory of several Contracting Parties and members of the service staff of diplomatic missions or consular posts, as well as persons employed in the private service of officials of such missions or posts.

116. Persons who reside in the territory of a Contracting Party other than the competent State are to receive benefits as follows:

- benefits in kind will be provided by the institution of the place of residence in accordance with its own legislation, at the expense of the competent institution;

- cash benefits will be paid by the competent institution or, by agreement between it and the institution of the place of residence, through the latter institution.

This arrangement was decided upon because it is normal for benefits in kind to be provided by the institution nearest to the beneficiary, which can have direct contact with him and carry out the necessary medical and administrative supervision. The same need does not arise in the case of cash benefits.

Paragraph 2

117. Similarly, under this paragraph members of the family are to receive benefits in kind in the State in which they reside.

Paragraph 3

118. This paragraph places frontier workers in a more favourable position. They have the option to receive benefits in the territory of the competent State or in the territory of the Contracting Party where they reside. This takes account of the fact that a frontier worker divides his time between the competent State and the State in which he resides.

119. This, as a rule, is not the case for the members of a frontier worker's family. Nevertheless, they may be treated in the same way, subject either to an agreement between the competent authorities of the States concemed or, except in cases of emergency, to prior authorisation by the competent institution.

Paragraphs 4 and 5

120. The provisions of these two paragraphs are intended to prevent refusal of benefit. Thus, under paragraph 4, workers or members of their families who do not normally reside in the competent State are also entitled to benefits in that State when they are temporarily resident there. Moreover, by virtue of paragraph 5, workers or members of their families covered by Article 20 who transfer their residence to the territory of the competent State are entitled to benefits there. These are supplementary provisions designed to cover persons in special situations.

Article 21 – Provision of benefits to persons who temporarily reside in, transfer their residence to, return to, or go for treatment to the territory of a Contracting Party other than the competent State

121. This article deals with the receipt of benefits in the territory of a Contracting Party other than the competent State, particularly in cases of temporary residence or transfer of residence abroad.

Paragraph 1

122. This paragraph covers three cases:

(a) where a person's condition necessitates immediate treatment during temporary residence in the territory of another Contracting Party;

(b) where, after becoming entitled to benefits, the person concemed is authorised by the competent institution to transfer his residence;

(c) where the person concerned is authorised by the competent institution to go to another State to receive appropriate treatment.

In all these cases benefits in cash and in kind are provided, in accordance with Article 20, to persons resident in the territory of a Contracting Party other than the competent State (see point 116 above).

Paragraph 2

123. This paragraph sets out the conditions for giving the authorisations mentioned above. Permission for the continued receipt of benefits after transfer of residence, as provided in sub-paragraph (b), is delivered by the competent institution. Such permission shall not be refused unless the move is shown to be inadvisable on medical grounds.

124. Authorisation to receive treatment in another State, as provided in sub-paragraph (c), is also delivered by the competent institution and shall not be refused unless the requisite treatment canne be given in the State in which the person concerned resides. Thus the competent institution has no discretionary power.

Paragraph 3

125. Under this paragraph members of the farnily receive benefits in kind under the same circumstances and in the same way as provided for in the preceding paragraphs.

Article 22 – Derogations from Articles 20 and 21 and calculation of cash benefits

Paragraph 1

126. This paragraph appears in other international agreements, arnong the Parties to, which are one or more States that make the payment of benefits to members of the farnily conditional on their being personally insured.

Paragraphs 2 to 4

127. These paragraphs were included to set out certain methods of calculation of cash benefits in order to simplify such calculation and to take account of family circumstances of the person concerned.

Article 23 – Provision of benefits in kind to unemployed persons

128. Unemployed persons who do not reside in the territory of the Contracting Party to whose legislation they were subject during their last employment, or who have transferred their residence to the territory of another Contracting Party, and who satisfy the conditions for entitlement to benefits in kind under the legislation of the first Contracting Party (due regard being had, where appropriate to the provisions of Article 19), shall receive both for themselves and for the members of their family the benefits provided for under the legislation of the State in which they reside. Such benefits are to be provided by the institution of the place of residence in accordance with its legislation, but on behalf of the competent institution of the Contracting Party which bears the cost of unemployment benefit.

Article 24 – Provision of benefits in kind to persons receiving pensions

Paragraph 1

129. This paragraph deals with a person receiving a pension under the legislation of two or more Contracting Parties who is entitled to benefits in kind in the territory of the State where he resides. Such benefits shall be provided for him and the members of his family as if he were receiving a pension solely under the legislation of the State in which he resides. The cost shall be borne in full by the institution of the latter State.

Paragraph 2

130. This paragraph deals with a person receiving a pension and residing in the territory of a Contracting Party under whose legislation he is not entitled to benefits in kind, either because that Contracting Party pays him no pension or because the pension it pays him carries no entitlement to such benefits. The benefits will nevertheless be provided, for him and the members of his family, by the institution of the place of residence if (regard being had where appropriate to the provisions of Article 19) he is entitled to them under the legislation of some other Contracting Party which pays him a pension.

Paragraph 3

131. Where a person is entitled to benefits in kind under the legislation of one Contracting Party only, the cost of such benefits is to be borne by the competent institution of that Party. Where he is entitled to benefits under the legislation of two or more Contracting Parties, the cost of the benefits is to be borne by the institution of the Contracting Party under whose legislation he has completed the longest period of insurance or residence; if, by virtue of this rule, two or more institutions would be liable for the cost of the benefits, the cost shall be borne by the institution of the Contracting Party to whose legislation he was last subject.

Paragraph 4

132. This paragraph deals with members of the pensioner's family who do not reside in the territory of the same Contracting Party as the pensioner. Such members of the family receive benefits in kind – where the pensioner is entitled to them under the legislation of a Contracting Party – from the institution of their place of residence, the cost being borne by the institution of the Contracting Party in whose territory the pensioner resides.

Paragraph 5

133.This paragraph is designed to preserve the entitlernent of members of the pensioner's family to benefits in kind when they transfer their residence to the territory of the Contracting Party in which he resides, even if they had already received benefits for the same case of sickness or maternity before the transfer. The expression "the same case of sickness or maternity" had to be included because certain Contracting Parties have legislation which uses this concept in determining the maximum period during which benefits are provided. The question whether it is in fact the same case of sickness or maternity can only be decided under the applicable legislation.

Paragraph 6

134. This paragraph deals with a person who receives a pension when he, or a member of his family, temporarily resides in the territory of a Contracting Party other than that in which they reside. In such a case, benefits in kind may be provided in the State in which they temporarily reside, if treatment is required immediately or if duly substantiated authorisation bas been granted in conformity with Article 21, paragraph 1 (c).

Paragraph 7

135. In the two cases mentioned above, benefits are to be provided by the institution of the Contracting Party of temporary residence, in accordance with its legislation, the cost being borne by the institution of the Contracting Party of the place of residence.

Paragraph 8

136. This paragraph provides that the institution of the Contracting Party which is to bear the cost of benefits in kind may deduct contributions from the pension if that Party's legislation provides for such deductions.

Article 25 – Application of provisions in the legislation of certain Contracting Parties

Paragraph 1

137. In view of certain special features in the legislation of some of the Contracting Parties, this paragraph provides that, where more than one sickness and maternity insurance scheme is in force in a Contracting Party, persons residing or temporarily residing in the territory of that Party who are entitled to benefits under the legislation of another Contracting Party shall be subject to the general scheme or, failing that, the scheme for industrial wage-earners.

Paragraph 2

138. This paragraph provides that where legislation relates the award of benefit to the origin of the sickness, this requirement cannot be invoked against persons covered by the Convention.

Paragraph 3

139. Where the legislation of a Contracting Party fixes a maximum period for the award of benefits, account may be taken where appropriate of any periods during which benefits have already been provided under the legislation of another Contracting Party for the same case of sickness or maternity. The expression "the same case of sickness or maternity" had to be included because certain Contracting Parties have legislation which uses this concept in determining the maximum period during which benefits are provided. The question whether it is in fact the same case of sickness or maternity can only be decided under the applicable legislation.

Article 26 – Delayed application of Articles 20, 21, 23 and 24 and dispensing with reffinds between Contracting Parties

Paragraph 1

140. Articles 20, 21, 23 and 24 are not to apply until after the conclusion of bilateral or multilateral agreements. This is because the Convention cannot cover every individual situation in detail. Accordingly, Article 19, which is immediately applicable, deals with what is essential for the acquisition of entitlement to benefits in the territory of the competent State. Articles 20, 21, 23 and 24 cover the special position of persons residing or temporarily residing outside the competent State, of unemployed persons and of pensioners. For these cases the Convention suggests arrangements in line with the most recent international agreements on the subject in order to arrive at effective and appropriate solutions of the problems concerned. However, the application of these solutions is subject to the conclusion of bilateral or multilateral agreements.

141. In this respect, it should be noted that under Article 5, paragraph 2, the corresponding provisions of social security conventions which, in general, are to be replaced by the Convention, are to remain applicable until such agreements come into force.

Paragraph 2

142. This paragraph lists the essential items to be included in bilateral or multilateral agreements. Sub-paragraph (a) deals with the essential problem, i. e. the possibility of limiting the scope of the agreements necessary for the application of Articles 20, 21, 23 and 24 of the Convention. The remaining four sub-paragraphs are concerned only with various practical applications. The limitation provided for in sub-paragraph (a) was included in order to take account of the legislation of some Contracting Parties which have no provisions for sickness and maternity benefits for self-employed persons.

Paragraph 3

143. This paragraph provides that Contracting Parties may agree not to make refunds between themselves. In such a case the cost of a benefit will be borne by the institution which provides it.

Chapter 2 - Invalidity, old age and death (pensions)

144. The provisions of this chapter govern the rules for the payment of invalidity, old age or survivors' benefits, where a person has been subject successively or alternatively to the legislations of two or more Contracting Parties.

145. The principles underlying the provisions of this chapter are explained in paragraphs 11 and 12 of this explanatory report. The amount of benefit due under the legislation of each Contracting Party shall be calculated as if all the periods of insurance or residence had been completed under one legislation only.

The proportion of the amount to be paid by a particular Contracting Party concerned shall be determined by dividing that amount in the ratio of the total of the periods completed under the legislation of that Party and the total of all the periods completed under the legislations of all the Contracting Parties concerned. It should be noted that most of the provisions in this chapter have full legal validity, without the necessity of concluding further agreements for their application.

Section 1 – Common provisions

Article 27 – General rules

146. This article provides that the benefits which may be claimed by a person or his survivors must be provided in accordance with the provisions of this chapter, even if such a person or his survivors would be entitled to claim benefits solely by virtue of the provisions of the legislation of one or more Contracting Parties. This principle applies to old age and survivors' benefits as well as to invalidity benefit.

Article 28 – Adding together of periods of insurance or residence

147. This article concerns the calculation of the total period of insurance or residence to be taken into account for the acquisition, maintenance or recovery of entitlement to invalidity, old age and survivors' benefit.

Paragraph 1

148. This is a standard provision containing rules for the calculation of total periods; these rules are based on the principles laid down in Article 19, paragraph 1, of the Convention. It provides that periods of insurance or, in the case of non-contributory legislations of residence after the age of sixteen (see point 115), completed under the legislation of any other Contracting Party must be taken into account also by the Contracting Party which makes the acquisition, maintenance or recovery of entitlement to benefits conditional on the completion of a period of insurance.

Paragraph 2

149. This paragraph deals with the opposite case, that is the taking into account of all periods of insurance or, in non-contributory schemes, of residence completed after the age of sixteen (see point 76, footnote 1) under the legislation of another Contracting Party by the Contracting Party which makes the acquisition, maintenance or recovery of entitlement to benefits conditional on the completion of a period of residence.

Paragraph 3

150. Since the Convention takes account of both contributory and non-contributory schemes, it may be that in some countries where the two types of scheme overlap, the insured person may not have an equal period of affiliation to both schemes. In this case, paragraph 3 indicates that account shall be taken by the Contracting Party concerned of the longest period of insurance or residence completed under either one of these schemes. The following example may serve as an illustration: in a given State there are two schemes, the national non-contributory basic system plus a supplementary insurance scheme. A migrant worker who has resided in that State for twenty years after the age of sixteen and has been affiliated for ten years to the supplementary insurance scheme of that State, will be entitled to have taken into account the longer period, that is twenty years.

Paragraph 4

151. This paragraph concerns periods of insurance which may be taken into account for admission to benefits, the provision of which is conditional upon having been insured in an occupation covered by a special scheme or in a specified occupation or employment. It provides that for the award of such benefits, only periods completed under a corresponding scheme, or failing that, in the same occupation or employment, under the legislation of another Contracting Party, will be taken into consideration; for example, if a worker is affiliated to a scheme for miners, only periods completed in other countries under a scheme applicable to the same occupation, or failing that, to employment in the mining industry, may be taken

into account. However, in order to ensure the maximum protection for all workers, this paragraph also provides that if the person concerned does not satisfy the conditions for entitlement to such benefits, these periods shall be taken into account for the award of benefits under the general scheme or, failing that, the scheme applicable to wage-earners or salaried employees, as appropriate.

Paragraph 5

152. This paragraph was included to take account of so-called "risk" legislations which do not require any period of insurance or employment to establish entitlement to, and the amount of, benefits, but which make the granting of benefit conditional only on a person being subject to that legislation. In fact, in order to establish entitlement under such legislations, even when the contingency arises at a time when the person concerned was not subject to that legislation, this paragraph contains a legal fiction according to which the contingency is supposed to have arisen under that legislation if at that time the person concerned, or the deceased, was subject to the social security legislation of another Contracting Party.

Paragraph 6

153. This paragraph concerns the taking into consideration, for the acquisition, maintenance or recovery of entitlement to benefits, by virtue of the legislation of one Contracting Party, of periods during which a pension or annuity is paid under the legislation of another Contracting Party (in so far as such periods may be taken into account to this effect) by virtue of the legislation of the first Contracting Party. For example, under the French legislation, periods during which an invalidity pension or an occupational injury annuity for a permanent incapacity of at least 66 2/3 % have been paid are assimilated to periods of insurance.

Article 29 – Determination of benefits

154. This article deals with the various possibilities for determining benefits, bearing in mind the various legislations applicable. The provisions of this article are applicable both where entitlement to benefits has been acquired solely by reference to periods completed under the legislation of other Contracting Parties and also where it has not been necessary to take account of such periods. In this context it should be noted that this article is not only applicable to legislations requiring a qualifying period to establish entitlement to benefits (and in relation to which the provisions of Article 28 conceming the adding together of periods apply), but also to non-contributory legislations requiring no qualifying periods for which the adding together of periods, whatever their nature, is not needed.

Paragraph 1

155. Under the provisions of this paragraph, it is for the institution of each Contracting Party to whose legislation the person has been subject to determine whether he satisfies the conditions for entitlement to benefits according to that legislation having regard, where appropriate, to periods of insurance or residence completed and added together under other legislations, as provided in Article 28.

Paragraph 2

156. By virtue of this provision, each competent institution, after establishing that the person concerned satisfies the conditions in paragraph 1, shall determine the theoretical amount of the benefit as if the person concerned had completed the whole of his career under the legislation which it applies. Article 30 of the Convention indicates the earnings to be considered for the calculation of the theoretical amount (see points 168, 169 and 170 of this explanatory report).

Paragraph 3

Sub-paragraph (a)

157. If the amount of the benefit does not depend on the length of periods of insurance or residence completed, that amount shall be taken to be the theoretical amount of benefit.

Sub-paragraph (b)

158. In the case of benefits specified in Annex IV to the Convention (which deals with benefits to which the provisions of paragraph 2 or paragraph 3 of Article 8 are applicable, i.e. non-contributory benefits the amount of which does not depend on the length of periods or residence completed), the theoretical amount referred to in paragraph. 2 may be calculated on the basis of the full benefit, and up to an amount not exceeding it, in the case of invalidity or survivors' pensions as well as in the case of old age, according to the following rules:

(i) in the case of invalidity or death – in proportion to the ratio of the total periods of insurance and residence completed after the age of sixteen, and before the contingency arose, by the person concerned. or by the deceased, under the legislations of all the Contracting Parties concemed (and taken into account in accordance with the provisions of Article 28) to two thirds the number of years which elapsed between the date on which the person concerned, or the deceased, reached the age of sixteen (see point 76 of this explanatory report) and the date of incapacity for work, followed by invalidity or death, as the case may be, disregarding any years subsequent to pensionable age;

(ii) in the case of old age – -in proportion to the ratio of the total periods of insurance and residence completed by the person concerned under the legislations of all the Contracting Parties concemed, and taken into account in accordance with the provisions of Article 28, to thirty years, disregarding any years subsequent to pensionable age.

159. The method of calculation of the theoretical amount described in Article 29, paragraph 3, has been adopted for the following reasons: paragraph 2 of the said article lays down the general rule for calculating the theoretical amount when it is to be calculated on the basis of the total periods of insurance or residence. Therefore the provisions of this paragraph are applicable only to those legislations which provide for the calculation of benefits on the basis of periods of insurance.

160. However, in order to cover all possible cases, paragraph 3 takes account of legislations according to which the amount of certain benefits is to be calculated independently of the length of periods completed, as, for example, where, such benefits are provided on the basis of a fixed amount or a specified percentage of the wages of the person concerned. Paragraph 3 (a) provides that in such a case the amount provided by the national legislation alone shall be taken as the theoretical amount. Paragraph 3 (b) sets out the basis on which the theoretical amount may be calculated in the case of non-contributery benefits specified in Annex IV of the Convention, the rate of which is fixed and therefore independent of the length of the periods of residence completed. With regard to old age benefits under paragraph 3 (b) (ii), the theoretical amount is equal to, the amount of the pension fixed by the national law provided that the person concerned has completed periods of insurance and residence amounting in all to at least thirty years. In cases where the total of such periods is less than thirty years the theoretical amount is reduced proportionately.

161. The period of thirty years adopted for the purpose of entitlement to a full pension in all cases where the benefit is independent of the periods of residence completed takes account of the need for a proportionate calculation based on periods spent in different States. A working life of thirty years is considered a reasonable qualifying period for entitlement to a full pension. Some legislations envisage a longer working life since in the last analysis this does not affect the division of costs between the States as paragraph 4 of Article 29 – under which the full pension is divided between the various States in which the periods have been completed – provides that this division shall be made in proportion to the actual length of the periods completed in each State as compared with the total of all such periods.

162. The reduction in pension in cases where the working life of the person concerned is less than thirty years is calculated according to the following fraction: the denominator always consists of the number 30 and the numerator consists of the total number of years completed by the person concerned under all the legislations in question between the date he reached the age of sixteen and the date he reached pensionable age.

163. With regard to invalidity or survivors' benefits under paragraph 3 (b) (i), the theoretical arnount is equal to the amount of the pension fixed by the national law, provided that the total length of the periods of insurance and residence completed by the person concerned or the deceased after the age of sixteen, and before the occurrence of the contingency under the legislations of all Parties concerned, is at least equal to two thirds of the number of years between the date on which the person concerned or the deceased reached the age of sixteen and the date on which the incapacity for work followed by invalidity or death occurred. If this period is less, the amount of the pension is reduced proportionately as shown in the following example:

If a person becomes incapacitated at the age of thirty-one after completing five years' residence in a State with a non-contributory system and three years' insurance in a State with a contributory system, he receives four fifths of the full amount of invalidity or survivor's pension, calculated as follows:

$$\frac{8}{2} = \frac{8}{10}$$

$$\frac{15}{3}$$

It is clear that if the period in the numerator (length of the periods completed under the legislations in question after reaching sixteen) is equal to or greater than two thirds of the number of years which have passed between the date the. person concerned reached sixteen and the date on which the invalidity occurred, the ratio is equal to or greater than one and the full pension is granted.

164. The words "disregarding any years subsequent to pensionable age" which appear at the end of sub-paragraphs (i) and (ii) of Article 29, paragraph 3, should be interpreted as follows:

- in the case of invalidity or death, pensionable age differs from one State to another so that the contingency can arise at an age prior to pensionable age in one State and after it in another. In order to cover this, the Convention provides that, if in that second State a benefit listed in Annex IV of the Convention is involved, the theoretical amount shall not be reduced on account of any years subsequent to pensionable age. Where a legislation fixes a certain pensionable age but provides on a voluntary basis, for reduced pensions at an earlier age or for higher pensions at a later age, the normal pensionable age shall be taken into account;

- in the case of old age, periods of residence completed after the pensionable age as determined above, in a State with a non-contributory scheme, shall not be considered.

Paragraph 4

165. The competent institution determines the actual amount of the benefit due to the person concerned as follows: on the basis of the theoretical amount arrived at under the provisions of paragraphs 2 and 3 of this article, it calculates the amount in each case according to the ratio of the length of the period of insurance or residence completed before the occurrence of the contingency under the legislation it applies to the total length of the periods of insurance or residence completed before the occurrence of the contingency under all applicable legislations.

Paragraph 5

166. This paragraph provides for a derogation from the provisions of paragraphs 2 and 4 of this article by empowering the institution of the Contracting Party to calculate benefits or parts of benefits directly, solely on the basis of the periods completed under the legislation applied by that institution. These provisions are intended to simplify and accelerate the payment of benefits without, however, adversely affecting rights to payment arising under other legislations. Recourse to this method of direct calculation is limited, however, to cases where the legislation of the Contracting Party concemed provides that the amount of benefits or certain parts thereof shall be in proportion to the periods of insurance or residence completed. Where the total duration of these perieds is shorter than or equal to the length of the qualifying period required for entitlement to full pension, the use of the method of direct calculation or the use of the proportionate method gives results which can be generally considered as almost equivalent. On the other hand, where the total duration of periods completed is longer than the qualifying period required for entitlement to full pension, the person concemed receives a higher pension. For example, a person who has completed fifteen years' insurance in State A (which has a contributory system and a proportionate system of calculation) and thirty years' insurance in State B (which also has a proportionate system of calculation and which provides a full pension after thirty years' insurance) will be entitled to a complete pension from State B and a partial pension from State A.

Article 30 – Additional provisions for the calculation of benefits

167. This article contains additional provisions concerning the calculation of the theoretical amount to take account of special features of the legislation of the member States relating to the calculation of benefit.

Paragraph 1

168. Article 29 provides that in calculating the amount of pension, periods completed under the legislation of other Contracting Parties are to be taken into consideration. Article 30, paragraph 1, sets out the rules for determining the other factors involved in calculating the amount of pension. As these factors vary between member States of the Council of Europe, the competent institution should base its examination of the claim on such information as may be available in the territory of the State where it is located. Because the competent institution does not have to contact the insurance institutions of the other Contracting Parties in respect of factors relating to such Parties, this rule should facilitate and expedite the examination.

169. This paragraph provides that the competent institution shall determine solely on the basis of the periods completed under the legislation it applies the factors to be taken into account in calculating the theoretical amount of the benefits referred to in Article 29 where, according to the legislation concerned, calculation of benefit is based either on average earnings, average contribution, average increase or on the ratio during the periods of insurance of the gross earnings of the person concerned to the average gross earnings of all

insured persons other than apprentices (sub-paragraph (a)); or on the amount of earnings, contributions or increases recorded (sub-paragraph (b)); or on the fixed eamings or a fixed amount (sub-paragraph (c)); or on the amount of earnings received for some periods and on fixed earnings or a fixed amount for orther periods (sub-paragraph (d)). These various factors are determined by the competent institution concerned, on the sole basis of periods completed under the legislation applied by that institution.

170. The expression "average eamings" means the average earnings of the person concerned and not those of the insured community. Sub-paragraph (a) of paragraph 1 is in fact intended only to determine the periods on the basis, of which the average eamings are calculated in the case where some periods have been completed under the legislation of one or more Contracting Parties other than the competent State. For reasons of simplicity in such cases the periods completed under other legislations shall not be taken into account, and calculation shall be made, only on the basis of the national legislation. The expression "average increase" refers to particular provisions of some legislations whereby pensions are calculated on the basis of a fixed lump sum plus an average increase corresponding to a percentage of the average earnings of the insured person calculated on the basis of his total working life.

Paragraph 2

171. This paragraph specifies that the factors taken into account for the calculation of benefits according to the provisions of Article 29 shall be revalued in accordance with the rules laid down by the legislation pursuant to which the amount is calculated, even in cases where these factors relate to periods abroad.

Paragraph 3

172. This paragraph contains a provision already encountered in Article 20, paragraph 4: members of the family residing in the territory of another Contracting Party shall be taken into consideration where the legislation of the Contracting Party concerned takes account of the number of members of the family in determining the amount of benefit.

Article 31 – Periods of less than one year

173. This article concerns the payment of benefit where the total period completed under the legislation of a Contracting Party is less than one year and where under that legislation alone the person concerned would not be entitled to benefit.

Paragraphs 2 and 3 of this article, however, provide that such a person shall normally be able to have such periods taken into account for benefit purposes. The article is also intended to expedite payment procedure by avoiding the increase in administrative work in the competent institutions which payment of small pensions would involve.

Paragraph 1

174. Paragraph 1 provides that periods of insurance or residence of less than one year do not give entitlement to benefits paid by the competent institution of the Contracting Party concerned, where these periods alone are not sufficient for entitlement under the legislation of that Party.

Paragraph 2

175. This paragraph provides that, for the purpose of adding the periods together, the institutions of each Contracting Party shall take into account the periods of less than one year completed under the legislation of other Contracting Parties, particularly in applying the provisions of Article 29, with the exception of those in paragraph 4 relating to reduction of the

theoretical amount calculated on a pro rata temporis basis. The following example may serve as an illustration: a person has been subject to the legislations of three Contracting Parties, (States A, B and C) for durations of respectively forty, thirty and ten months. In such a case benefits shall be determined as follows: supposing that the ten months' period completed under the legislation of State C does not give entitlement to benefits in that State, only the institutions of States A and B shall be competent. They shall determine entitlement to benefits according to their own legislation, taking into account a total of eighty months of insurance. Each institution of A and B shall then determine the theoretical amount on the basis of eighty months of insurance and calculate the amount actually due without taking into account the ten months completed in State C. Thus, State A shall provide forty-seventieths and State B thirty-seventieths of their respective theoretical amount.

Paragraph 3

176. This paragraph provides that where the person concerned has no entitlement under the legislation of any Contracting Party, because a period of one year has not been reached in any of them, benefits shall be granted under the legislation of the last Contracting Party whose conditions are fulfilled by the person concerned, having regard to the provisions of Article 28.

Article 32 – Periods from one to five years

177. This article is similar to the preceding one but takes account, for old age pension purposes only, of periods of between one and five years. It was included in the Convention to meet the situation where large numbers of migrants reside in a State for short periods only. Such periods have to be taken into account, for the purpose of applying Article 29, by the competent institution of the Contracting Party under whose legislation the migrant worker concerned has completed the longest period of insurance or residence. This greatly simplifies the work of institutions. As provided for under paragraph 6 of this article, the application of all the provisions of this article is subject to the conclusion of bilateral or multilateral agreements between Contracting Parties. Moreover such application is limited to the case where the persons concerned have been subject exclusively to the legislation of the said Parties.

Paragraph 1

178. This paragraph provides that the competent institution of a Contracting Party under whose legislation periods of insurance or residence of at least one but less than five years have been completed need not award old age benefits in respect of those periods even if under that legislation these periods give entitlement to such benefits. This paragraph applies to a different case than that referred to in Article 31, paragraph 1, in the sense that such periods may give entitlement to old age benefits by virtue of the legislation of one State, but are to be taken into account by the institution referred to in Article 32, paragraph 2.

Paragraph 2

179. This paragraph provides that the institution of the Contracting Party under whose legislation the person concerned completed his longest period of insurance or residence shall, for the purpose of applying Article 29, take account of the periods referred to in the preceding paragraph, as if these periods had been completed under its legislation. When the periods completed are of the same length, the benefits shall be awarded in accordance with the provisions of Article 29, paragraph 4, of the Convention, by the institution of the State to whose legislation the person concerned was last subject.

Paragraph 3

180. As the periods referred to in this article are not inconsiderable, this paragraph provides that while benefits shall only be paid by the institution of the Contracting Party under whose legislation the person concerned has completed the longest period, the other institutions to

which the person concerned was affiliated for periods of between one and five years shall discharge their obligations by paying to the former institution a lump surn equal to ten times the annual amount of the benefit payable by each of them for their respective periods. These latter institutions are thus freed from any obligations to pay benefit in respect of such periods. The factor 10 has been selected as it represents the average number of years during which old age benefits are paid in the member States of the Council of Europe.

Paragraph 4

181. This paragraph contains a saving clause which applies to a case similar to that in Article 31, paragraph 3.

Example: a national of a Contracting Party has been affiliated for four years to the legislation of State A, three years to that of State B, five years to that of State C (whose legislation makes the entitlement to benefit conditional upon the completion of a period of insurance of, say, fifteen years) and two years to the legislation of State D, whose provisions for entitlernent to benefit are similar to those of State C. As the worker has been affiliated to the legislation of States A, B and D for a period of less than five years, in each case, these States would transfer their obligations to the institution of State C where the worker has completed the longest period of insurance. But since the qualifying period for entitlernent to old age pension in State C is not fulfilled, Article 29 becomes applicable by virtue of Article 32, paragraph 4. The person concerned is accordingly entitled to receive a benefit from the institutions of States A and B, calculated on the basis of all the periods of insurance completed, and paid in proportion to the periods completed in States A and B. State D, like State C, is excluded because it requires a qualifying period of at least fifteen years.

Paragraph 5

182. This paragraph is designed to protect a person from the consequences which might arise out of the combined application of the provisions of Article 31, paragraph 1, and of Article 32, paragraph 1. It provides that in such a case benefits shall be granted in accordance with the rules of Article 29, without prejudice to the provisions of paragraphs 1 and 2 of Article 31.

The following example illustrates this point: a worker who is a national of State A has been insured for eleven months in that State, for fifty-three months in State B, for forty months in State C, for fifty-eight months in State D and thirty months in State E, i.e. for a total of a hundred and ninety-two months or sixteen years. If paragraph 1 of Article 31 was applied to him in State A, no benefits would be granted in that State, and if paragraph 1 of Article 32 were applied, no benefits would be payable in the four other States. By virtue therefore of paragraph 5 of Article 32 it is Article 29 that applies and in accordance with that article the five institutions concerned shall calculate the total period of insurance, examine whether any entitlement exists on the basis of sixteen years, determine the theoretical amount and the pro rata portion. In the absence of the agreement referred to in paragraph 6, the institutions concerned shall apply the provisions of Articles 29 and 31.

Paragraph 6

183. None of the provisions of this article is immediately applicable. Their application is conditional on the conclusion of subsequent agreements between the Contracting Parties, and is limited to the case where the persons concerned have been subject exclusively to the legislations of the said Parties.

Article 33 – Calculation of benefits where the person concerned does not satisfy simultaneously the conditions required by all the legislations concerned

184. This article was included in the Convention to take account of the fact that the person concerned does not always satisfy simultaneously the conditions for entitlement to benefits of various national legislations. This occurs in particular in respect of pensionable age, which varies from State to State, the number of contributions necessary, the length of the periods required to give entitlement to benefits, and the different concepts of invalidity. Where the periods of insurance or residence completed by the person concerned in the territory of two Contracting Parties are not sufficient for entitlement to benefit, it is possible to take into account periods completed in the territory of a third Contracting Party even if the insured person is not yet entitled to benefits in that State.

Example: the person concerned has completed five years of insurance in each of three different States. In two of these States pension age is sixty and in the other sixty-five. When this person reaches the age of sixty, he claims old age pension in the first two States which shall apply the provisions of Article 33 since the conditions are not simultaneously satisfied in all the three States.

This gives rise to two possible alternatives here. In the first, the period of ten years of insurance, resulting from the adding together of the two periods completed in the first two States only, is taken as sufficient to give entitlement to benefit. In this case, each of the two States calculates the theoretical amount on the basis of ten years and pays five tenths of the total amount disregarding the period completed in the third State.

In the second, the ten years' period does not give entitlement to benefit in the first two States, which shall then take account also of the period cornpleted under the legislation of the third State. If fifteen years of insurance give entitlement to benefit in the first two States, each shall determine the theoretical amount on the basis of fifteen years and pay five-fifteenths of that total amount. When the person concerned reaches the age of sixty-five, he will then claim a pension from the third State which will pay him the remaining five-fifteenths.

Paragraph 1

185. This paragraph indicates the method to be followed in calculating benefits under each of the legislations whose conditions are satisfied, having regard to the provisions of Article 28.

Sub-paragraph (a)

186. This provides as appropriate either for the use of calculation by proportion as laid down in paragraphs 2 and 4 of Article 29 of the Convention, or for direct calculation as prescribed in paragraph 5 of the same article.

Sub-paragraph (b)

187. This provides that in calculating benefits where the insured person fulfils the requirements of one or more legislations without needing to apply the provisions of Article 28, no account shall be taken of periods completed under legislations whose conditions are not satisfied.

Paragraph 2

188.This paragraph provides for the recalculation without request of benefits awarded as and when the person concerned satisfies the conditions of one or more of the other legislations to which he has been subject. This paragraph was included in Article 33 so as to guarantee such a person revision of benefits previously awarded when it becomes possible to take into consideration new factors affecting entitlement, as for example in the case of a person who has been subject to legislations which differ as to age of entitlement to old age pension.

Paragraph 3

189. This paragraph provides for recalculation, in the opposite case and at the request of the beneficiary, i.e., where the conditions required by one or more legislations cease to be satisfied. This would happen, for example, when the person recovers part of his working and earning capacity which in some States would cause a reduction or the suppression of benefits. A second example could be that of a widow's remarriage which would entail the suppression of widow's benefits.

Article 34 – Differential supplement

190. The purpose of the differential supplement is to prevent a person to whom the Convention applies from suffering a loss when the benefit payable to him under the legislation of one Contracting Party, if the provisions of Article 28 to 33 of the Convention were disregarded, would be greater than the total amount of benefit payable under those provisions.

Paragraph 1

191. This paragraph guarantees the person concerned a supplement equal to the difference between the amount to which he would have been entitled under the legislation of one Contracting Party and the amount calculated according to the provisions of Articles 28 to 33 of the Convention. The cost of this supplement is to be borne entirely by the competent institution of the Contracting Party under whose legislation the person concerned would have been entitled to the higher benefit.

Paragraph 2

192. This paragraph lays down that where the provisions of paragraph 1 would result in the payment of several supplements by the institutions of two or more Contracting Parties, the claimant shall receive only the highest supplement. However, the cost of this supplement shall not be borne entirely by the competent institution which pays it, but shall be shared proportionately between the competent institutions of all the Contracting Parties concerned, having regard to the amount of the supplement which each would have had to pay.

Paragraph 3

193. For the purposes of simplification, this paragraph provides that the supplement referred to in the preceding paragraph shall be considered as a component of the benefits provided by the institution liable for payment when the amount of the supplement is determined; it shall continue to be paid at that rate, unless it becomes necessary to apply the provisions of paragraphs 2 and 3 of Article 33 (which provide for a recalculation of benefits already granted) because the person concerned subsequently satisfies or ceases to satisfy the conditions for entitlement to benefit under another legislation to which he has been subject.

The expression "one and for all" in the text of this paragraph means that the supplement is not affected by modifications in the amount of benefits granted by the other States, for example in conjunction with an adjustment or a re-evaluation of pensions.

Article 35 – Aggravation of invalidity

194. This article deals with the case where there is a deterioration or worsening of an invalidity in respect of which a person is receiving benefits from one or more Contracting Parties.

Paragraph 1

195. Paragraph 1 is concerned with benefits paid by one Contracting Party only. Two possible situations are covered:

- the first of these is dealt with in sub-paragraph (a). This concerns the case of a person who, since he began to receive benefits, has not been subject to the legislation of any other Contracting Party. It is provided that in such a case, the competent institution which is already paying benefits in respect of the invalidity shall bear the cost of the increase in benefits resulting from the aggravation of the invalidity;

- the second possibility is dealt with in sub-paragraph (b). This concerns the person who has been subject to the legislation of one or more other Contracting Parties since he began to receive benefits. In this case benefits shall be awarded, taking the aggravation into account, in accordance with the provisions of Articles 28 to 34.

196. Sub-paragraph (c) provides that in the case covered by the preceding sub-paragraph, the date on which the aggravation was established shall be regarded as the date on which the contingency arose.

197. Sub-paragraph (d) provides that if in the case covered by sub-paragraph (b) the person concerned is not entitled to benefits from the institution of another Contracting Party, the institution which was liable for the payment of benefits to him before the aggravation occurred shall continue to provide such benefits in accordance with the legislation which it applies, taking into account the aggravation.

Paragraph 2

198. This paragraph deals with the case in which a person receives invalidity benefits from. more than one Contracting Party. It provides that where an aggravation giving rise to an increase in these benefits occurs; in such a case, the increased benefits shall be calculated in accordance with the provisions of Articles 28 to 34.

Article 36 – Resumption of paynient of invalidity benefits after suspension [(1)] or suppression [(2)]

Paragraph 1

199. This paragraph provides that where payment of benefits has been suspended and is to be resurned, payment shall be made by the institution or institutions liable for payment at the time of suspension, without prejudice to the provisions of Article 37.

(1) The expression "suspension of benefits" means that payment of benefits bas stopped but entitlement to benefits remains.

(2) The expression "suppression of benefits" means that payment of benefits has stopped because entitlement to benefits has ceased.

Paragraph 2

200. This paragraph deals with the case where benefits have been suppressed but where the state of health of the person concerned justifies a new award of benefits. In this case such benefits shall be awarded in accordance with the provisions of Articles 28 to 34.

Article 37 – Conversion of invalidity benefits into old age benefits

Paragraph 1

201. This paragraph provides that where the legislation of a Contracting Party requires that invalidity benefits be converted into old age benefits, the conversion shall take place at the age and under the conditions prescribed by that legislation, in accordance with the provisions of Articles 28 to 34.

Paragraph 2

202. This paragraph was included to meet the type of situations envisaged in Article 33 where a recipient of invalidity benefits who has been subject to the legislations of several Contracting Parties does not simultaneously satisfy the conditions required by all these legislations for entitlement to old age benefits, but satisfies only one or some of them. It is provided that, in such a case, the invalidity benefits the person concerned is receiving shall continue in payment until their conversion into old age benefits under each of the legislations concerned.

For example, a person receiving an invalidity pension under the legislation of a Contracting Party which provides for entitlement to an old age pension at the age of sixty-five, and another invalidity pension under the legislation of another Contracting Party which provides for entitlement to an old age pension at the age of sixty, will continue to receive the first invalidity pension until the age of sixty-five, notwithstanding the fact that from the age of sixty he will receive an old age pension from the second Contracting Party. It is only from the age of sixty-five (the normal age for entitlement to an old age pension under the legislation of the first Party) that the invalidity pension granted by the competent institution of that Party will be converted into an old age pension calculated according to the provisions of Articles 28 to 34.

Chapter 3 – Occupational injuries and diseases

203. The provisions of this chapter set out the rules for the award of benefits payable in respect of occupational injuries and diseases.

It should be noted that this chapter covers all workers who are victims of occupational injuries or diseases. Consequently, self-employed persons may also avail themselves of the provisions of this chapter if they are covered by the legislations concemed.

Article 38 – Provision of benefits to workers residing in the territory of a Contracting Party other than the competent State

204. The provision of benefits in cash and in kind in the country of residence of the worker is provided for in the same way as in Article 20 of the Convention.

Paragraph 1

205. Sub-paragraph (a) lays down that benefits in kind shall be provided at the expense of the competent institution, by the institution of the place of residence in accordance with the rules it applies, as if the person concerned were affiliated to it.

206. Sub-paragraph (b) lays down that cash benefits shall be paid by the competent institution, unless this institution, while continuing to bear the cost, arranges for the payment of these benefits, on its behalf, by the institution of the place of residence.

Paragraph 2

207. This paragraph concerns frontier workers. It provides that benefits may also be paid to them by the competent institution in the territory of the competent State as if they were residing in that territory.

Paragraph 3

208. This paragraph provides that all workers other than frontier workers, who temporarily reside in the territory of the competent State, shall receive benefits in its territory in accordance with its legislation, even if they were already receiving benefits before taking up their temporary residence there.

Paragraph 4

209. This paragraph deals with the case of workers to whom this article applies who transfer their residence to the territory of the competent State. It provides that they shall receive benefits there in accordance with its legislation, even if they were already receiving benefits in the territory of the Contracting Party where they were previously residing.

Article 39 – Compensation for workers who are victims of an accident on the way to or from work in the territory of a Contracting Party other than the competent State

210. Under this article, an accident on the way to or from work in the territory of a Contracting Party other than the competent State shall be regarded as having happened in the territory of the competent State. Examples of such accidents are: accidents on the way to or from work suffered by frontier workers between their place of residence and the frontier, and accidents suffered by workers sent to work temporarily in the territory of a Contracting Party other than the competent State.

Article 40 – Provision of benefits to workers who temporarily reside in, transfer their residence to, return to, or go for treatment in the territory of a Contracting Party other than the competent State

211. This article deals with the position of victims of an occupational injury or disease who live in, or go into the territory of a Contracting Party other than the competent State.

Paragraph 1

212. This paragraph provides that the benefits in kind and the cash benefits to which such persons are entitled in the competent State shall be awarded to them in the territory of another Contracting Party if:

(a) they are temporarily resident there;

(b) they have been authorised by the competent institution, after becoming entitled to benefits payable by it, to transfer their residence there or to return there (as in the case of seasonal workers); or

(c) they have been authorised by the competent institution to go there in order to receive suitable treatment.

In these various circumstances the rules governing the provision of benefits are the same as those in Article 21 relating to sickness and maternity.

Paragraph 2

213. This paragraph is designed to give the maximum protection to all persons concerned and to ensure that the best treatment will be available to them. It accordingly provides that the authorisation needed for the maintenance of benefit in the case of transfer of residence or return to the territory of another Contracting Party shall only be refused if the move is likely to prejudice the health of the person concerned or his course of medical treatment. It further provides that the necessary authorisation to go to the territory of a Contracting Party other than the competent State for suitable treatment may not be refused, where the treatment required cannot be provided in the territory of the Contracting Party in which he resides.

Article 41 – Prosthetic appliances, major aids and major benefits in kind

214. This article provides that the competent authorities of two or more Contracting Parties may agree that in the cases provided for in Articles 38, paragraph 1, and 40, paragraph 1, the supply of prosthetic appliances, major aids and other benefits in kind can be made conditional upon authorisation by the competent institution.

215. However, it should be noted that this article does not prejudice the provision of the benefits in question in conformity with Articles 38 and 40 since these articles are immediately applicable. Even in the absence of an agreement between the Contracting Parties, the beneficiaries are entitled to all benefits including those of major importance (e.g. high cost benefits or long periods of hospitalisation) as soon as the Convention enters into force.

Article 42 – Cost of transporting the victim to the territory of the Contracting Party in which he resides

216. This article sets out the conditions for payment of the cost of transporting the victim of an occupational injury or disease who is transported to the territory of the Contracting Party in which he resides. The provisions of the article are not immediately applicable, but are conditional on the conclusion of agreements between the Contracting Parties. Two possible situations are covered:

- the first concerning the cost of transport to the place of residence or to the hospital,
- the second, the transport of the body to the place of burial.

Paragraph 1

217. In the first situation, where the legislation of the competent State provides for payment of such costs, these shall be borne by the competent institution, provided that it has given prior authority for the cost of the transport. The expression "due account being taken of the reasons justifying it" is intended to ensure that the competent institution gives full consideration to the question whether the repatriation of the injured person is justified, as, for example, it would be in the case of a seriously injured person in need of a long period of treatment or convalescence, who could benefit from the presence of his family.

Paragraph 2

218. In the second situation, where the legislation of the competent State provides for payment of such costs, these shall be borne by the competent institution in accordance with the provisions of the legislation which it applies.

Paragraph 3

219. This paragraph provides that the application of the provisions of paragraphs 1 and 2 above is conditional upon the conclusion of agreements between the Contracting Parties specifying the categories of persons to whom these provisions shall apply and the arrangements for apportioning the transport costs. To the extent necessary, such agreements shall also take account of cases of urgency where the authorisation of the competent institution provided for in paragraph 1 of Article 42 could not be obtained before the transport of the victim.

Article 43 – Special provisions in certain legislations

220. This article takes account of special situations which may arise from special provisions in the legislations of some Contracting Parties.

Paragraph 1

221. This paragraph covers the case of countries of residence or temporary residence where there is no specific insurance scheme, nor any institution specifically responsible fer benefits in kind, in respect of occupational injury or disease, as, for example, is the case in Belgium and the Netherlands. It lays down that, in such cases, benefits must be provided by the insurance institution of the place of residence or temporary residence liable for the provision of benefits in kind in the event of sickness.

Paragraph 2

222. This paragraph is concemed with those legislations of Contracting Parties which provide that benefits in kind shall not be completely free unless use is made of the medical service organised by the employer. In such cases, the paragraph prescribes that benefits provided in the country of residence or temporary residence, in accordance with paragraph 1 of Article 38 or with paragraph 2 of Article 40, shall be deemed to have been provided by such a medical service.

Paragraph 3

223. This paragraph is concerned with those legislations of Contracting Parties which include an employer's liability scheme. In such cases, the benefits in kind provided, in accordance with the provisions of paragraph 1 of Article 38 or of paragraph 1 of Article 40, in the country of residence or temporary residence, are treated as benefits provided at the request of the competent institution.

Paragraph 4

224. This paragraph covers the case where the legislation of a Contracting Party requires that previous occupational injuries or discases should be taken into account in assessing the degree of incapacity. It provides that, in such cases, the competent institution of the Contracting Party concerned shall also take into account occupational injuries or diseases which occurred under the legislation of any other Contracting Party, as if these had occurred under the legislation which it applies. It should however be noted that previous occupational injuries or diseases are taken into account solely in relation to the assessment of the degree of incapacity and so have no bearing on the calculation of pension.

Article 44 – Other special provisions

Paragraph 1

225. This paragraph deals with the case of a country of residence or temporary residence which has several compensation schemes for occupational injuries or diseases (Article 25, paragraph 1, deals with a corresponding situation in relation to sickness and maternity). It provides that, in such a case, the scheme applicable to a person residing or temporarily residing in the territory of that country and receiving benefits under the legislation of another Contracting Party shall be the general scheme, or, failing that, the scheme for industrial workers.

Paragraph 2

226. This paragraph corresponds to Article 25, paragraph 3, of the Convention, and provides that if a maximum period is fixed for the provision of benefits, the institution concerned may take into account, where appropriate, periods during which benefits have already been provided by the institution of another Contracting Party.

Article 45 – Calculation of cash benefits

227. The text of this article corresponds to paragraphs 2, 3 and 4 of Article 22, which deals with the same problems in respect of sickness and maternity insurance.

Article 46 – Compensation for persons contracting an occupational disease alter exposure to risk in the territory of several Contracting Parties

228. The provisions of paragraphs 1 and 2 of this article are immediately applicable. The application of the provisions of paragraphs 3 and 4 is conditional upon the conclusion of agreements between Contracting Parties.

Paragraph 1

229. This paragraph determines the legislation under which benefit is to be awarded in the case of a person suffering from an occupational disease, who has worked in the territory of several Contracting Parties. It provides that benefits payable to such a person or to his survivors shail be awarded in accordance with the legislation of the last Contracting Party in whose territory he was entitled to benefit, having regard, where appropriate, to the provisions of paragraphs 2, 3 and 4 of this article.

Paragraph 2

230. This paragraph provides that where it is required that the disease should have been first diagnosed in the territory of the Contracting Party where entitlement exists, this condition shall be deemed to have been fulfilled in all cases where such diagnosis was made in the territory of another Contracting Party.

Paragraph 3

231. Where it is required that the occupational disease should have been diagnosed within a specified period after the termination of the last occupation likely to have caused it, paragraph 3 provides that the competent institution shall take account of any occupation of the same kind followed under the legislation of other Contracting Parties, as if it had been followed under the legislation which it applies.

Paragraph 4

232. This paragraph takes account of legislations which make entitlement to benefits payable in respect of an occupational disease conditional on the occupation which caused the disease having been followed for a specified period. It provides that in such cases the competent institution shall take account of periods during which such an occupation was followed under the legislation of other Contracting Parties.

Paragraph 5

233. As pointed out above, this paragraph makes the application of paragraphs 3 and 4 conditional on the conclusion of agreements between the Contracting Parties. It also provides that such agreements shall specify the occupational diseases to which the said provisions shall be applied and the method of apportioning the cost between the Contracting Parties concerned. The following examples serve to illustrate application of this article.

Example 1: A worker who has contracted an occupational disease has been in an occupation likely to cause such a disease in three States in succession: A, B and C. State A is a country whose legislation specifies no such periods as are mentioned in Article 46, paragraphs 3 and 4. State B is a country whose legislation provides for compensation for occupational disease provided it has been diagnosed in its territory within a specified period after termination of the activity which caused it. State C is a country where compensation for the occupational disease in question is conditional upon the occupation likely to cause the disease having been followed for a specified period. However the Parties have entered into no agreements under the terms of Article 46, paragraph 5.

In accordance with Article 46, paragraph 1, the first State which has to examine the question of entitlement is the State in which the worker was last occupied, namely State C. If the total period of exposure to risk in that State is sufficient to entitle the worker to benefit, then State C shall award the benefit and bear the cost. But it may be on the other hand, that periods of exposure to risk completed in B or even in A would have to be taken into account to give any entitlement to benefit in C. In that event, since State C cannot take account of periods completed in the other countries because no agreement, under the terms of Article 46, paragraph 5, has been concluded, there is no entitlement in C. We therefore turn to the previous country, State B.

Here the same problem arises but in a different form. The problem here is that the occupation likely to cause the occupational. disease in question terminated in State C and no diagnosis has been made in B. As it has no agreement with C, State B cannot pay benefits on the basis of any diagnosis that may have been made in C. We thus turn to, State A, and as its legislation neither prescribes a period as required in C, nor requires diagnosis to have been made in its territory within a specified period following termination of the dangerous occupation in question, it must, if there is entitlement under its legislation, award the benefits and bear the cost.

Example 2: A person has been in an occupation in three different States and bas been subject to their legislations for specific periods. States A and B lay down conditions in conformity with the provisions of Article 46, paragraphs 3 and 4. But State C does not lay down any such conditions. In that event if the institution of State C is required to pay benefits it must award them independently of the other two States because the apportionment of costs, in accordance with paragraph 5, only applies to the cases provided for under paragraphs 3 and 4.

The philosophy of the article is as follows: paragraph 5 makes application of the particular provisions of paragraphs 3 and 4 conditional upon the conclusion of bilateral or multilateral agreements. This means that if the legislation of a Contracting Party (either States D, E or F) does not prescribe conditions such as those in paragraphs 3 and 4, it must grant benefits, whether or not any bilateral or multilateral agreements have been concluded, in all cases

where the conditions laid down under its own legislation are fulfilled. On the other hand, another State whose legislation does prescribe the conditions in paragraphs 3 and 4 will not apply the provisions of the two paragraphs and will therefore only award benefits if agreements have been concluded in conformity with paragraph 5. In both cases there is of course a difference in situation resulting from differences in the legislations in question. However, it should be noted that occupational diseases for which national legislations prescribe a certain period of exposure to risk before there is any entitlement to benefit are very limited in number.

The purpose of national lists of occupational diseases is in fact to establish that the person concerned has been working in certain occupations exposing him to the risks in question; it is much rarer to find that the worker is required to have been working in such occupations for a specified period, and enquiries carried out on the occasion of the drafting of Regulation No. 3 of the European Communities to find out what diseases were being aimed at in this latter type of legislation showed that the disease in question was essentially sclerogenic pneumoconiosis for which certain States lay down the condition that there must have been exposure to risk for a specified period. Consequently the implications of Articles 3 and 4 must not be overestimated. The terms "explicitly" and "implicitly" which appear in these paragraphs were deliberately included to ensure that when these paragraphs were being applied legislations would not be interpreted literally and that account would be taken of jurisprudence, according to which, before there can be any entitlement to benefit, it is necessary to establish a certain period of exposure to risk.

This means that certain States where jurisprudence emphasises the need for a certain period of exposure to risk in cases of sclerogenic pneumoconiosis have the opportunity, as a result of the wording of paragraphs 3 and 4, to turn to the bilateral or multilateral agreements provided for under paragraph 5. In fact, the only States which, under the terms of paragraph 5, are not allowed to have recourse to mutual agreements for the application of paragraphs 3 and 4 and therefore for the apportionment of costs are those States which explicitly or implicidy rule out any such condition concerning the establishment of a time period. Such States are lirnited in number. As far as relations between such States are concerned (for example States E and F), there is nothing in the Convention to justify refusal of benefits on the basis of the argument that certain periods were completed in another State, given the fact that legislations in these States take no account of periods in the sense of paragraphs 3 and 4. In their mutual relations these States will never have to turn to paragraph 5 and will not be able to provide for distribution of costs by means of this paragraph. On the other hand, as far as relations between these States and other States with more restrictive legislation are concerned, paragraph 5 may apply.

To illustrate this point, in State G the law prescribes that in cases of sclerogenic pneumoconiosis a certain period of exposure to risk should be taken into account. But in order to apply paragraph 4, that State must conclude bilateral or multilateral agreements not only with States which have legislations of the same type, but also with States where no account is taken of the completion of periods (for example, the States D, E and F mentioned earlier). In the event of agreements being concluded between States D, E, F and G, there is nothing to prevent those who negotiate these agreements from providing for apportionment of benefit costs between all the Parties involved. The point is that the wording of paragraph 5 enables even those States whose legislations prescribe none of the provisions referred to in Articles 3 and 4 to associate, through their relations with States whose legislation does prescribe such provisions, in a system for apportioning costs; thus the arrangement provided for under Article 46 is much fairer than at first sight appears to be the case. In any case, the main purpose of these provisions is to guarantee a compensation for those workers who are victims of occupational diseases. These provisions, which make it possible to go back in time from one institution to another, ensure that every possibility for establishing a worker's entitlement to benefit has been exhausted.

Article 47 – Aggravation of occupational diseases

234. This article deals with the case where a worker suffering from an occupational disease has received or is receiving benefit in respect of that disease from the competent institution of a Contracting Party and claims benefits from the institution of another Contracting Party because of an aggravation in his condition. Two possible situations are covered.

Sub-paragraph (a)

235. The first situation is similar to that covered by Article 35, paragraph 1 (a), concerning the aggravation of an invalidity, that is to say: where an occupation likely to cause or aggravate the disease has not been followed in another Contracting Party, the competent institution which has already paid or is paying benefit in respect of such invalidity shall bear the cost of the increase in benefits payable for the aggravation.

Sub-paragraph (b)

236. The second situation is where such an occupation has been followed under the legislation of another Contracting Party. In this case the institution which has already paid or is paying benefits in respect of the occupational disease shall continue to pay such benefits, disregarding the aggravation; the institution of the Contracting Party where the person concerned has followed the occupation likely to cause the aggravation shall bear the cost of a supplement equal to the difference between the.amount which would be payable, after the aggravation, under the legislation which it applies, and the amount which would have been payable before the aggravation, if the disease had been contracted in its territory.

Article 48 – Refund of benefits between Contracting Parties

Paragraph 1

237. This paragraph specifies that the cost of benefits in kind provided by the institution of the place of residence or temporary residence of the person concerned on behalf of the competent institution, in accordance with the provisions of paragraph 1 of Article 38 or of paragraph 1 of Article 40, shall be refunded in full by the competent institution to the institution which awarded benefit.

Paragraph 2

238.This paragraph provides that the refund of benefits in kind referred to in paragraph 1 shall be made under arrangements agreed between the Contracting Parties. Refund of the cost of such benefits begins where the Convention enters into force. The arrangements between the Contracting Parties shall only concern the procedure agreed for the refund. It should be noted that as the award of benefits is based on the Convention, the provision of benefits is not conditional on the conclusion of agreements between the Contracting Parties.

Paragraph 3

239. This paragraph provides that two or more Contracting Parties may agree to dispense with refunds between the institutions in their jurisdiction.

Chapter 4 – Death (grants)

240. This chapter relates to all types of death grants, whatever their origin.

Article 49 – Acquisition, maintenance or recovery of entitlement to benefit

241. The provisions of this article, which correspond to those of Articles 19 and 28, lay down the principle of adding periods together where the legislation of one Contracting Party makes the acquisition, maintenance or recovery of entitlement to benefit conditional on a period of insurance or residence. It provides that, in such cases, the competent institution shall take account, to the extent necessary, of periods of insurance or residence completed under the legislation of other Contracting Parties.

Article 50 – Special provisions

Paragraph 1

242. This paragraph was included so as to take account of legislations which make the award of death grants conditional on the insured person's having died in the territory where the legislation is applicable. In order to ensure entitlement to benefit where death occurs in the territory of another Contracting Party, this paragraph provides that in such cases death is deemed to have occurred in the territory of the competent State.

Paragraph 2

243. This paragraph provides that the competent institution shall award the death grant payable under the legislation which it applies, even if the beneficiary resides in the territory of a Contracting Party other than the competent State.

Paragraph 3

244. This paragraph prescribes that the provisions of the preceding paragraphs shall also cover deaths resulting from occupational injury or disease.

Chapter 5 – Unemployment

245. This chapter sets out the rules governing the award of unemployment benefits. It should be noted that the application of the provisions of this chapter, with the exception of those relating to the adding together of periods of insurance or residence, are subject to the conclusion of bilateral or multilateral agreements. As provided in Article 56 such agreements should specify in particular: the categories of persons to whom these provisions apply, the periods during which benefits are to be paid, and the arrangements for refund when benefits have been paid by the institution of one Contracting Party on behalf of the institution of another Contracting Party.

Article 51 – Acquisition, maintenance or recovery of entitlement to benefits

246. The first two paragraphs of this article are designed to implement the general principle (set out in Articles 10, 19, 28 and 49 of the Convention) of the adding together of periods to be taken into account for the acquisition, maintenance or recovery of entitlement to benefit when such entitlement is conditional upon the completion of a period of insurance, employment, other occupational activity or residence.

Paragraph 1

247. Paragraph 1 deals with legislation requiring the completion of periods of insurance. In this case the institution applying such legislation takes account, to the extent necessary, of periods of insurance, employment or other occupational activity completed under the legislation of other Contracting Parties, provided that such periods would have been treated as periods of insurance if they had been completed under the legislation applied by that institution.

Paragraph 2

248. This paragraph deals with legislation requiring the completion of periods of employment, other occupational activity or residence. In this case the institution which applies such legislation takes account, to the extent necessary, of periods of insurance, employment or other occupational activity completed under the legislation of other Contracting Parties as if these were periods of employment, other occupational activity or residence completed under the legislation applied by that institution.

Paragraph 3

249. This paragraph concerns periods of insurance which may be taken into account when the grant of benefits is conditional upon the completion of a period of insurance in an occupation covered by a special scheme. It provides that only periods completed under a corresponding scherne or, failing that, in the same occupation under the legislation of another Contracting Party shall be taken into account for the grant of benefits; for example, in granting benefits under a special scheme for miners account shall only be taken of periods completed in other States under a scheme applying to the same occupational category or, failing that, to the mining industry. However, in order to ensure the maximum protection for all workers, this paragraph also provides that if the person concerned does not fulfil the conditions entitling him to these benefits, the periods in question shall be taken into account for the award of benefits under the general scheme.

Paragraph 4

250. Paragraph 4 provides that in order to benefit from the provisions of this article the unemployed person must have been last subject to the legislation under which he claims unemployment benefit; however, in accordance with sub-paragraphs (a) (ii) and (b) (ii) of paragraph 1 of Article 53, this condition does not apply, for example, in the case of a wholly unemployed frontier worker or a seasonal worker wholly unemployed in his State of residence after having returned at the end of the season for which he was employed.

Article 52 – Maintenance of entitlement to benefit on change of residence

251. This article provides for the maintenance of entitlement to unemployment benefit of an unemployed person who has fulfilled the conditions required by the legislation of one Contracting Party with respect to the completion of the required periods – taking account where appropriate of the provisions of Article 51 – when he transfers his residence to the territory of another Contracting Party.

252. An unemployed person who fulfils these conditions is deemed to be fulfilling the conditions required by the legislation of the Contracting Party in whose territory he establishes his new residence as if he had fulfilled the qualifying conditions in that territory, provided, however, that he lodges a claim, with the institution of this Contracting Party within thirty days of his change of residence. That institution shall then provide him with benefits in accordance with its own legislation; but the cost of these benefits shall be borne by the competent institution of the Contracting Party in whose territory he has ceased to reside. The time limit of thirty days was provided in order to give unemployed persons a reasonable period to take advantage of the provisions of this article.

253. The reason behind the fact that benefits are provided by the institution of the place of residence according to its own legislation is to allow the persons concerned to receive in their new country of residence the same benefits as other unemployed persons in that country, bearing in mind that their living requirements are the same and that they are equally available for employment in that country.

The provisions of this article are also designed to simplify the procedure for the payment of benefits since they do not require the institution of the place of residence to pay benefits different from those provided for by its own legislation.

Article 53 – Unemployed persons who were not residing in the territory of the competent State during their last period of employment – Provision of benefits

254. This article sets out the conditions for awarding unemployment benefits to frontier workers and other categories of workers (in particular seasonal workers, commercial travellers and agents) who during their last period of employment were not residing in the territory of the Contracting Party to whose legislation they were subject.

Paragraph 1

Sub-paragraph (a) (frontier workers)

255. Sub-paragraph (a) (i) deals with cases of partial or incidental unemployment. In these cases it provides that the benefits awarded to frontier workers should be those provided by the legislation of the competent State which decides on the entitlement – taking account, where appropriate, of the provisions of Article 51. It also provides that the persons concerned should be treated as if they were residing in the territory of the competent State.

256. Sub-paragraph (a) (ii) deals with the case of total unemployment. It provides that unemployment benefits shall be awarded in accordance with the legislation of the Contracting Party in whose territory the unemployed frontier worker resides. These benefits are provided by the institution of that Contracting Party's legislation as if the worker had been subject to its legislation during his last employment.

A wholly unemployed frontier worker must therefore fulfil the conditions required by the legislation of the Contracting Party in whose territory he resides, taking account where appropriate of the provisions of Article 51. If he satisfies these conditions, unemployment benefit is paid with the provisions of the legislation of the country of residence. This rule was adopted because in the case of total unemployment a frontier worker is available in the employment market of his place of residence.

Sub-paragraph (b) (workers other than frontier workers)

257. Sub-paragraph (b) (i) deals with workers other than frontier workers, who are partially, incidentally or wholly unemployed and who remain available to their employers or the employment services of the competent State. In these cases this sub-paragraph provides that the workers in question shall be granted benefits in accordance with the legislation of the competent State and that their rights shall be determined by the legislation of that State as if they were residing in its territory, taking account, where appropriate, of the provisions of Article 51. Sub-paragraph (i) also provides that these benefits should be paid by the competent institution.

258. Sub-paragraph (b) (i) deals with wholly unemployed workers other than frontier workers who either return to their country of residence or make themselves available to its employment services. In this case it is provided that if such workers have not been awarded benefits by the institutions of the competent State, they shall receive unemployment benefits from the State of residence as if they had last been employed there, taking account, where appropriate, of the provisions of Article 51. If their entitlement is recognised under this legislation, their unemployment benefits are paid in accordance with the provisions of the legislation of their country of residence. Benefits shall be paid by the institution of the Contracting Party in whose territory the worker resides.

259. Sub-paragraph (b) (iii) also deals with the category of workers covered in paragraph 1 (b) (ii) but is concerned with the special case of workers who have already received benefits from the institution of the Contracting Party to whose legislation they were last subject. In this special case such workers should receive unemployment benefits in accordance with the provisions of Article 52 of the Convention in the same way as if they had changed their place of residence in the territory of the Contracting Party mentioned under sub-paragraph (b) (ii) of this paragraph. If, for example, a seasonal worker becomes prematurely unemployed in a country to which he went to take up a seasonal occupation and, after beginning to receive unemployment benefits under the legislation of that country, returns to the territory of the Contracting Party in which he resides, the provisions of Article 52 are applied, *mutatis mutandis*, and the worker continues to receive unemployment benefits in his country of residence but in accordance with the provisions of that country's legislation.

Paragraph 2

260. In relation to the cases covered by sub-paragraphs (a) (i) and (b) (i) of paragraph 1 of this article, the provisions of this paragraph are designed to prevent the overlapping of benefits when they are payable both by the Contracting Party in whose territory the unemployed person was last employed and by the Contracting Party in whose territory he resides. Paragraph 2 thus ensures that so long as an unemployed worker receives unemployment benefits under the legislation to which he was subject during his last employment, he cannot claim unemployment benefits under the legislation of the Contracting Party in whose territory he resides.

Article 54 – Special provisions in the legislation of certain States concerning the maximum duration in the payment of benefits

261. This article provides that when the legislation of the State in which an unemployed worker resides prescribes a maximum period for the award of benefits, the institution of that State may take account of the period during which benefits have already been paid for the same unemployment under the legislation of another Contracting Party.

Article 55 – Calculation of benefits

262. This article sets out certain rules for the calculation of unemployment benefit.

Paragraph 1

263. This paragraph provides that if under the legislation of a Contracting Party the benefits are based on previous earnings, the institution applying this legislation shall only take account of previous earnings in the territory of that Party if the unemployed person had been employed there for at least four weeks. Where this is not the case, the relevant earnings shall be those paid in the territory where he resides for work similar to his last occupation in the territory of another Contracting Party.

Paragraph 2

264. The provisions of this paragraph correspond to those in paragraph 4 of Article 22, paragraph 3 of Article 30 and paragraph 3 of Article 45 of the Convention. Members of the family residing in the territory of any other Contracting Party are taken into consideration where the legislation of the Contracting Party concerned takes account of the number of members of the family in determining the amount of unemployment benefit.

Paragraph 3

265. Paragraph 3 deals with the case where the legislation of the country of residence determines the time for which benefits shall be payable in accordance with the length of the periods of insurance completed. In this case account is taken, where appropriate, of such periods completed under the legislation of other Contracting Parties, in accordance with the provisions of paragraphs 1 or 2 of Article 51.

Article 56 – Application of the provisions of Articles 52 to 54 by way of bilateral or multilateral agreements: dispensing with refunds between Contracting Parties

Paragraph 1

266. This paragraph provides that the application of Articles 52 to 54 of the Convention is subject to the conclusion of bilateral or multilateral agreements between the Contracting Parties. As in Article 26, the Convention deals in Article 51 with what is regarded as the essential problem, i.e. the adding together of the periods of insurance for the acquisition, maintenance or recovery of entitlement to benefit by unemployed persons in the territory of the competent State. In Articles 52, 53 and 54 the Convention deals with particular situations applying to persons permanently or temporarily resident outside the competent State. In order to arrive at an effective and appropriate settlement presented by persons in such situations, the provisions of these articles are in line with the most recent international agreements on the subject. However, the application of these provisions is subject to the conclusion of bilateral or multilateral agreements.

Paragraph 2

267. This paragraph provides that the agreements referred to in the preceding paragraph shall specify in particular:

(a) the categories of persons to whom the provisions of Articles 52 to 54 shall apply;

(b) the period during which benefits may be paid by the institution of one Contracting Party for the account of another Contracting Party;

(c) the arrangements for the refund of benefits paid by the institution of one Contracting Party on behalf of the institution of another Contracting Party.

It should be noted that sub-paragraph (a) enables Contracting Parties to limit the scope of the agreements necessary to make Articles 52, 53 and 54 of the Convention applicable while sub-paragraphs (a) and (c) are concerned only with practical arrangements of a different nature. This was done to take account of the fact that some Contracting Parties have no scherne dealing with self-employed persons in relation to unemployment insurance.

In this connection it will be recalled that under Article 5, paragraph 2, the corresponding provisions of social security conventions which, in general, are to be replaced by the Convention, are to remain applicable until the agreements to which this article refers come into force.

Paragraph 3

268. This paragraph contains a provision similar to paragraph 3 of Article 26 and paragraph 3 of Article 48 to the effect that the Contracting Parties are entitled to agree that there shall be no refunds between institutions in their jurisdiction.

Chapter 6 – Family benefits

269. The provisions of this chapter deal with the award of family benefits due under the Convention. There are general provisions applying from the entry into force of the Convention. It also has two separate sections containing provisions relating respectively to family allowances and family benefits the application of which is subject to the conclusion of bilateral or multilateral agreements between Contracting Parties. There is an essential difference between the two sections. The first is based on the application of the legislation of the State in which the person entitled to family allowances is employed, while the second is based on the application of the legislation of the State in whose territory the other members of the family reside.

270. The Contracting Parties are free to decide whether they will apply the provisions of the first section or those of the second section. This is because the legislations of the Contracting Parties are based on different principles in this field.

Article 57 – Acquisition of entitlement to family benefits

271. This article, which is of immediate application, provides for the adding together of periods in accordance with one of the fundamental principles of the Convention (see Articles 10, 19, 28, 49 and 51). It prescribes that when the legislation of a Contracting Party makes the entitlement to benefits conditional on the completion of periods of employment, other occupational activity or residence, the competent institution of that Party must take into account, for the purpose of adding periods together, periods of employment, other occupational activity or residence completed under the legislation of other Contracting Parties to the extent necessary to enable the persons concerned to become entitled to benefits under the legislation of the Contracting Party to which they are subject.

Article 58 – Conditions governing the application of the provisions of Sections 1 and 2 of Chapter 6

272. This article sets out the conditions under which the Contracting Parties may apply the provisions of Section 1 or Section 2 of Chapter 6 by way of bilateral or multilateral agreements.

Paragraph 1

273. The Contracting Parties may, by concluding bilateral or multilateral agreements, choose between the application of the provisions of Section 1 and those of Section 2. The provisions of these two sections of the Convention are in line with those of the most recent international agreements on the subject. However, the application of these solutions is subject to the conclusion of bilateral or multilateral agreements.

Paragraph 2

274. In this paragraph the Convention lists the essential items to be included in bilateral or multilateral agreements:

(a) the categories of persons to whom the provisions of Articles 59 to 62 shall apply;
(b) rules to prevent the overlapping of benefits of the same kind;
(c) where appropriate the maintenance of rights under previous social security conventions.

It should be noted that sub-paragraph (a) enables Contracting Parties to limit the scope of the agreements necessary to make Articles 59 to 62 of the Convention applicable. This was provided for to take account of the fact that certain Contracting Parties have no legislation applicable to self-employed persons with regard to family benefits.

Section 1 : Family allowances

275. In accordance with the definition of "family allowances" in sub-paragraph (w) of Article 1 of the Convention, this section is concerned solely with periodic cash benefits awarded according to the number and age of the children.

Article 59 – Provision of family allowances for children residing or being brought up in the territory of a Contracting Party other than that to whose legislation the beneficiary is subject

276. This article provides that entiflement to family allowances is determined in accordance with the legislation of the Contracting Party in whose territory the head of the family is employed. However, the amount of such allowances may be limited to the amount of family allowances provided by the legislation of the Contracting Party in whose territory the children of the worker concerned reside or are being brought up.

Paragraph 1

277. This paragraph deals with the categories of children eligible for benefit under the provisions of Articles 60 and 61.

Paragraph 2

278. This paragraph provides that, if the children of the person concerned are residing in the territory of a Contracting Party other than the competent State, they shall be treated as if they were residing in the territory of that State. In such cases therefore the person concerned may receive family allowances under the legislation of that State.

Paragraph 3

279. This paragraph modifies the application of the provisions of paragraph 2 by providing that the amount of the family allowances payable by the competent institution may be limited to the amount of the allowances provided for by the legislation of the Contracting Party in whose territory the children of the person concerned reside or are being brought up. This provision does not concern entitlement to family allowances but has been inserted in order to avoid family allowances being paid for children residing in a country, in excess of the amount that would be payable if the recipient were employed in that country.

Paragraph 4

280. This paragraph provides that the comparison of the amounts of family allowances for the purposes of the application of the previous paragraph shall take into account the total number of children dependent on the same beneficiary, that is to say the person through whom the children become entitled to the allowances. Where the legislation of the Contracting Party in whose territory the children reside or are being brought up specifies that the amount of such allowances shall differ according to different categories of recipients, this paragraph provides that regard shall be had to the amount of family allowances determined in accordance with that legislation.

Paragraph 5

281. This paragraph concerns in particular the children of a worker sent to work in another country, who accompany him to that country (the case referred to in sub-paragraph (a) of Article 15) and provides that notwithstanding the provisions of the preceding paragraphs 3 and 4, family allowances shall continue to be paid to the worker concerned under the legislation of the Contracting Party with which he is insured during the time he is abroad.

Paragraph 6

282. This paragraph contains an additional provision concerning payment of family allowances. When the physical or legal person to whom such allowances are payable resides or is temporarily in the territory of a Contracting Party other than the competent State, the allowances shall nevertheless be paid in accordance with the provisions of the legislation of the competent State.

Article 60 – Provision of family allowances for children of an unemployed worker who reside or are being brought up in the territory of a Contracting Party other than that providing the unemployment benefits

Paragraph 1

283. This paragraph prescribes that when the legislation of the Contracting Party which bears the cost of unemployment benefits provides for the payment of family allowances to unemployed workers, such unemployed workers receiving allowances under this legislation are entitled to family allowances in respect of their children residing or being brought up in the territory of another Contracting Party.

Paragraph 2

284. This paragraph prescribes that the provisions of paragraphs 1, 3, 4 and 6 of Article 59 shall apply, *mutatis mutandis*.

Section 2 : Family benefits

285. In accordance with the definition of "family benefits" in sub-paragraph (w) of Article 1 of the Convention, this section is concerned with any benefits in kind or in cash granted to offset family expenses other than the special birth grants expressly excluded in Annex II as being of a demographic rather than a social character. The provisions of this section guarantee to all the members of the family and not to children only in the country in which they reside, all the family benefits to which they would have been entitled if the person concerned, even though employed in another country, were subject to the legislation of the country of residence of the members of the family.

286. This arrangement is administratively simpler. The arnount of the benefits is determined by one legislation only, i.e. that of the country of residence, and this obviates comparison between the rates in the country of residence and those in the competent State. Moreover the facts relating to the members of the family can be checked on the spot without needing to seek the assistance of the institution of another Contracting Party.

Article 61 – Provision ot family benefits to members ot an unemployed person's family who reside in the territory of a Contracting Party other than that to whose legislation the beneficiary is subject

Paragraph 1

287. This paragraph provides that members of the family residing in the territory of a Contracting Party other than that to whose legislation the beneficiary is subject, are entitled to family benefits on the same basis as members of a family who are subject to the legislation of the first Contracting Party. The institution of the place of residence shall pay the benefits under the conditions prescribed by the legislation it applies, but the cost shall be borne by the competent institution of the Contracting Party to whose legislation the beneficiary is subject.

Paragraph 2

288. This paragraph contains a provision similar to that of paragraph 5 of Article 59 to the effect that members of the family of an employed person sent to work in another country who accompany him to that country (the case referred to in sub-paragraph (a) of paragraph 1 of Article 15) shall continue to receive family benefits under the legislation of the Contracting Party to which the worker remains subject. The benefits are paid by the competent institution, but, to simplify the relevant formalities, this paragraph makes it possible to derogate from this rule by means of agreements between the competent institution and the institution of the place of residence. In such a case the benefits may be paid by the institution of the family's place of residence, the cost being borne by the institution of the Contracting Party to whose legislation the worker remains subject.

Article 62 – Provision of family benefits to members of the family of an unemployed worker who reside in the territory of a Contracting Party other than that by which the unemployment benefits are paid

289. This article is similar to Article 60 which deals with the award of family allowances to members of the family of an unemployed worker who reside in the territory of a Contracting Party other than that by which the unemployment benefits are paid.

The article provides that when the legislation of a Contracting Party responsible for paying unemployment benefits provides family benefits for unemployed persons, the unemployed persons receiving benefit under this legislation are entitled to family benefits for the members of their family residing in the territory of another Contracting Party and these benefits shall be paid in accordance with the legislation of that Party.

Article 63 – Arrangements for the refund of benefits

290. In cases where the provisions of Section 2 are applied between two or more Contracting Parties, this article provides that benefits paid by the institution of the State of residence of the beneficiary's family shall be refunded by the institution of the competent State. In accordance with the principles established for sickness and maternity benefits, this article leaves the arrangements for such refunds (paragraph 1) or the renunciation of refunds (paragraph 2) to be settled by bilateral or multilateral agreements.

TITLE IV – Miscellaneous provisions

Article 64 – Relations between the competent authorities of the Contracting Parties

291. This article contains a series of provisions to facilitate the exchange of information between the competent authorities of the Contracting Parties, to make provision for mutual assistance in administrative matters and to facilitate working arrangements.

Paragraph 1

292. This paragraph provides that the competent authorities of the Contracting Parties shall communicate to each other all information relating either to steps taken to apply the Convention or to changes in their legislation which may have a direct effect on the application of the Convention.

Paragraph 2

293. In this paragraph the obligation of mutual assistance provided by municipal law is extended to relations with the authorities and institutions of the other Contracting Parties for the purposes of the application of the Convention. In addition this paragraph provides that mutual assistance in administrative matters between the authorities and institutions of the Contracting Parties shall be free of charge. The competent authorities may however make provision for the refund of certain costs, particularly in cases where such mutual assistance involves specific disbursements, e.g. enquiries or medical opinions etc.

Paragraph 3

294. In order to expedite necessary measures provided for by the Convention, this paragraph provides that the authorities and institutions of the Contracting Parties may enter into direct contact with each other and with the persons concerned and their representatives.

Paragraph 4

295. This paragraph provides that the authorities, institutions and courts of a Contracting Party shall not reject any applications and other documents addressed to them because they are drawn up in one official language of another Contracting Party.

Article 65 – Exemption from, or reduction of, taxes, stamp duties, legal dues or registration fees connected with documents

296. This article follows certain provisions of the Hague Convention of 1954 on Civil Procedure and is intended to extend the exemptions, reductions or exceptions granted by the legislation of a Contracting Party to certain certificates, documents or similar instruments required to be produced by the person concerned by virtue of the legislation of another Contracting Party or of the Convention.

Paragraph 1

297. This paragraph relates to exemption from or reduction of taxes, stamp duty, legal dues or registration fees; it provides that such exemptions or reductions shall be extended to similar documents which have to be produced under the legislation of any Contracting Party or under the Convention.

Paragraph 2

298. This paragraph relates to exemption from authentication or any other similar formality for instruments, documents or certificates required for the purposes of the Convention. The words "similar formalities" refer in particular to the marginal note which under Article 3 of the Hague Convention of 5 October 1961 on abolishing the requirements of legalisation for foreign public documents, substitutes this authentication.

Article 66 – Submission of claims, declarations or appeals – Institutions with which claims may be lodged – Time within which claims must be submitted

299. This article provides that the person concerned may submit claims to the institution of his place of residence and also indicates the manner of dealing with claims which have been lodged with an institution that is not itself competent to deal with them.

Paragraph 1

300. This paragraph safeguards the right of a person claiming benefits while residing in the territory of a Contracting Party other than the competent State. It provides that in such a case he may validly present his claim to the institution of his place of residence which shall refer it to the competent institution or institutions.

Paragraph 2

301. This paragraph also safeguards the rights of a person presenting a claim, declaration or appeal. It provides that claims, declarations or appeals which should have been submitted within a specified time to an authority, institution or tribunal with a view to the application of the legislation of one of the Contracting Parties shall be admissible if they are submitted within the same period to a corresponding body in another Contracting Party.

302. Such claims, declarations or appeals should be forwarded without delay to the competent authority, institution or tribunal of the Contracting Party to which they should have been sent. The authorities, institutions or tribunals concerned may forward such documents either directly or through the competent authorities of the Contracting Parties concerned. In order to avoid the possibility that delays in the transmission of the documents may result in the claim being late, this paragraph also provides that the date on which a claim, declaration or appeal is submitted to the authorities, institutions or tribunals of any Contracting Party shall be deemed for all relevant purposes to be the date of its submission to the authority competent to deal with it.

Article 67 – Medical examinations outside the competent State

303. This article permits the competent institution of a Contracting Party to arrange for medical examinations to be carried out through the institution of another Contracting Party where the person concerned resides or temporarily resides in the territory of the latter Contracting Party.

Paragraph 1

304. In order to simplify matters for the competent authorities and the person concerned, this paragraph provides that a medical examination carried out by the institution of the Contracting Party in whose territory the person concerned resides or temporarily resides shail be treated as if it had been carried out by the competent institution in its own territory.

Paragraph 2

305. This paragraph provides that the application of the provisions contained in the previous paragraph is subject to the conclusion of bilateral or multilateral agreements between the Contracting Parties.

Article 68 – Payment of cash benefits when the recipient is in the territory of a Contracting Party other than the competent State – Refunds of benefits between institutions of the Contracting Parties – Transfer of sums becoming due under the Convention

Paragraph 1

306. This paragraph deals with the payment of cash benefits by the institution of a Contracting Party to a person who is in the territory of another Contracting Party. It provides that in such a case the liability shall be expressed in the currency of the Contracting Party liable to pay such benefits, but that the actual payment may be made in the currency of the country where the person is.

Paragraph 2

307. This paragraph deals with the refund of benefits provided by the institution of a Contracting Party on behalf of the institution of another Contracting Party, and provides that in such cases the liability shall be expressed in the currency of the Contracting Party whose institution has provided the benefits. The institution liable may also make payments in this currency unless the Contracting Parties concerned have made other arrangements.

Paragraph 3

308. With regard to transfers of funds resulting frorn the application of the Convention, this paragraph provides that these shall be effected in accordance with the relevant agreements in force between the Contracting Parties concerned at the date of the transfer. In the absence of such agreements, the arrangements for effecting such transfers shall be agreed between the Contracting Parties.

Article 69 – Recovery of contributions and calculation of their amount

309. This article deals with the calculation of the amount of contributions due to the institution of a Contracting Party by an insured person with an income in the territory of another Contracting Party. It also sets out the conditions for the recovery of contributions due to the institution of a Contracting Party where the person concerned is in the territory of another Contracting Party. The application of this article is subject to the conclusion of bilateral or multilateral agreements.

Paragraph 1

310. This paragraph provides that, in calculating the amount of contributions, the competent institutions of the Contracting Parties shall take account, where appropriate, of income received in the territory of another Contracting Party.

Paragraph 2

311. This paragraph provides that the contributions due to the institution of a Contracting Party may be recovered in the territory of another Contracting Party in accordance with the administrative procedures of and subject to the guarantees and privileges in the legislation of that Party.

Paragraph 3

312. This paragraph makes the application of the provisions of paragraphs 1 and 2 conditional upon the conclusion of bilateral or multilateral agreements between the Contracting Parties. These agreements may also prescribe the legal procedure for such recovery.

Article 70 – Right of legal action against third parties in respect of injuries caused or sustained in the territory of a Contracting Party other than the competent State

313. This article concerns the right to take legal action for damages against third parties in respect of injuries caused or sustained in the territory of a Contracting Party other than the competent State.

Paragraph 1

314. This paragraph concerns the case in which an injury bas been caused by a third party in the territory of a Contracting Party other than the competent State and in which the legislation applied by the institution liable to pay benefits provides that this institution can exercise the

right to claim damages by subrogation or that it has a direct right against the third party liable for the damage.

(a) this sub-paragraph provides that such subrogation shall be recognised by all Contracting Parties.

(b) this sub-paragraph provides that if the institution has a direct right against third parties such right shall be recognised by all the Contracting Parties.

Paragraph 2

315. The application of the provisions of the preceding paragraph is subject to the conclusion of bilateral or multilateral agreements between Contracting Parties.

Paragraph 3

316. As the various national legislations do not necessarily regard the employer or his agents as third parties and the provisions of paragraph 1 of this article apply equally to legal action against an employer or his agents, this paragraph provides for rules to be made, by agreement between the Contracting Parties concerned, governing the liability of employers or their agents for accidents at work, or on the way to or from work, which occur in the territory of a Contracting Party other than the competent State.

Article 71 – Settement of disputes

317. This article sets out the procedure for settling disputes between two or more Contracting Parties regarding the interpretation or application of the provisions of the Convention.

Paragraph 1

318. This paragraph provides that the Parties to the dispute shall in the first place negotiate between themselves.

Paragraph 2

319. This paragraph deals with the case where one of the Parties to the dispute considers that the subject matter of the dispute is likely to affect all the Contracting Parties. In such a case it is provided that both Parties to the dispute, or, failing that, one of them, shall submit the question to the Committee of Ministers of the Couneil of Europe.

Paragraph 3

320. This paragraph deals with cases where it has net been possible to settle the dispute by use of the procedures provided for in paragraphs 1 and 2 of this article. In such cases it is provided that within a fixed time-limit of six months from the first request for the opening of negotiations under paragraph 1 or three months after the communication to the Parties concerned of the opinion of the Committee of Ministers under the procedure laid down in paragraph 2, any Party to the dispute may request that it be submitted to a single arbitrator. The paragraph further provides that the Party requesting arbitration shall notify the opposing Party, through the Secretary General of the Council of Europe, on the subject matter of the claim which it seeks to submit to arbitration and the legal and factual grounds on which it is based. The communication referred to in the first sentence of paragraph 3 of this article shall be made by the Secretary General of the Council of Europe.

Paragraph 4

321. This paragraph concerns the appointment of the arbitrator and provides that unless otherwise agreed by the Contracting Parties concerned the arbitrator shall be appointed – as provided by other conventions concluded within the framework of the Council of Europe and outside it – by the President of the Court of Human Rights. This paragraph additionally sets out the circumstances which disqualify a person from acting as an arbitrator.

Paragraph 5

322. This paragraph prescribes the procedure to be followed in appointing an arbitrator when the President of the European Court of Human Rights cannot himself make the appointment, or is a national of one of the Parties to the dispute.

Paragraph 6

323. This paragraph provides that if no special arbitration agreement has been concluded between the Parties to the dispute or if such an agreement is not sufficiently precise, the arbitrator shall give his decision on the basis of the provisions of the Convention, taking due account of the general principles of international law.

The use of the expression "on the basis of the provisions of this Convention" means that in making his decision the arbitrator shall not disregard the terms of the Convention. The provisions of paragraph 6 reflect the rules usually applied in international arbitrations between States. This paragraph was drawn up on the basis of the provisions of Articles 23, 24 and 25 of the European Convention for the Peaceful Seulement of Disputes, signed in Strasbourg on 29 April 1957, which explicitly provides that "the Parties shall draw up a special agreement determining the subject of the dispute and the details of the procedure" and "in the absence of sufficient particulars in the special agreement... the provisions of Part IV of the Hague Convention of 18 October 1907 for the Pacific Seulement of International Disputes shall apply so far as possible...".

Paragraph 7

324. This paragraph provides that the arbitrator's decision shall be final and binding.

Article 72 – Particular measures for the application of the legislation of certain Contracting Parties

325. This article concerns Annex VII to the Convention in which each government may include any special or particular arrangements relating to its domestic law, which affect the application of the Convention with regard to that country. It also sets out the procedure to be followed when giving notice of amendments of Annex VII.

Article 73 – Annexes to the Convention

326. This article defines the legal status of the Annexes to the Convention and prescribes the procedure for their amendment.

Paragraph 1

327. This paragraph provides that the Annexes set out below, and any subsequent amendments thereto, shall be an integral part of the Convention:

- Annex I - Definition of territories and nationals of the Contracting Parties, referred to in sub-paragraph (b) of Article 1;

- Annex II - Legislation and schemes to which the Convention is applicable, referred to in paragraph 1 of Article 3;

- Annex III - Provisions remaining in force notwithstanding the provisions of Article 5, referred to in paragraph 3 of Article 6;

- Annex IV - Benefits to which the provisions of paragraph 2 or paragraph 3 of Article 8 are applicable, referred to in paragraph 4 of Article 8;

- Annex V - Provisions of conventions whose application is extended to nationals of all Contracting Parties, referred to in paragraphs 2 and 3 of Article 9;

- Annex VI - Benefits to which the provisions of paragraph 1 or paragraph 2 of Article 11 are not applicable, referred to in paragraph 3 of Article 11;

- Annex VII - Particular measures for the application of the legislation of the Contracting Parties, referred to in paragraph 1 of Article 72.

Paragraph 2

328. This paragraph provides that any amendment which a Contracting Party has notified to the Secretary General of the Council of Europe shall be considered as adopted if, within a period of three months, no other Contracting Party and no signatory State has notified its opposition thereto to the Secretary General. The reason for this provision lies in the fact that the original contents of the Annexes, agreed upon by the negotiating Parties of the Convention, was adopted by the decision of the Committee of Ministers to open the Convention to signature.

Paragraph 3

329. This paragraph provides that if opposition to an amendment is notified, any ensuing dispute shall be settled according to a procedure to be laid down for this purpose by the Committee of Ministers of the Council of Europe.

TITLE V – Transitional and final provisions

Article 74 – Transitional provisions

330. This article contains transitional provisions setting out in particular the circumstances in which the provisions of the Convention may be applied to cases previously dealt with.

Paragraph 1

331. This paragraph provides that the Convention confers no rights with respect to any period before its entry into force. The date of entry into force referred to in this article is that of the entry into force of the Convention for the Contracting Party or the Contracting Parties concerned.

Paragraph 2

332. This paragraph is complementary to the preceding paragraph and provides that periods of insurance, employment, other occupational activity or residence completed before the date of entry into force of the Convention shall be taken into account in relation to claims arising after that date.

Paragraph 3

333. This paragraph provides that, subject to the provisions of paragraph 1, events such as an accident, occurring prior to the entry into force of the Convention, may be taken into account immediately it enters into force, in relation to any rights which may derive from the provisions of the Convention.

Paragraph 4

334. This paragraph provides for the revision, in the light of the provisions of the Convention, of cases dealt with in the past. If benefits have not been paid or have been suspended for reasons relating to the nationality or residence of the persons concerned, they may, on application by those persons, be paid or resumed on the basis of the provisions of the Convention, unless liability for such benefits has previously been discharged by payment of a capital sum.

Paragraph 5

335. This paragraph extends the provisions of the preceding paragraph to cases where pensions or annuities were already in payment before the entry into force of the Convention. In such cases it provides that, on the application of the persons concerned, such pensions or annuities shall be reassessed in the light, where appropriate, of the new rights conferred by the Convention. The competent institution may also take the initiative in this respect, in revising the pensions or annuities, but in no case shall such a revision lead to any reduction of benefits previously awarded to the persons concerned.

Paragraphs 6 and 7

336. These paragraphs provide that applications made under the provisions of paragraphs 4 and 5 must be submitted within a period of two years. Failing this the right to benefit will become effective only from the date of submission of the application and not from the date of entry into force of the Convention. This is without prejudice, however, to any more favourable provisions in the legislation of the Contracting Parties concerned.

Article 75 – Signature, ratification, acceptance and entry into force of the Convention

337. The provisions of this article follow generally the model final clauses adopted by the Committee of Ministers of the Council of Europe.

Article 76 – Relationship between the European Interim Agreements on Social Security and the Convention

338. This article prescribes that the provisions of the Interim Agreements on Social Security and their Protocols shall cease to be applicable between the Contracting. Parties as from the entry into force of the Convention. The provisions of these Agreements will however continue to apply between States which have not ratified the Convention and between such States and the Contracting Parties.

Article 77 – Accession to the Convention by States not members of the Council of Europe

339. This article envisages the possibility of non-member States of the Council of Europe acceding to the Convention on the invitation of the Committee of Ministers and lays down the procedure to be followed in such a case. It should be noted that such accession to the Convention is not limited to European States only.

Paragraph 1

340. This paragraph provides that the Committee of Ministers of the Council of Europe may invite non-member States of the Council of Europe to accede to the Convention. It states that the resolution concerning the Committee of Ministers' invitation shall not only be approved in accordance with the usual conditions laid down in sub-paragraph (d) of Article 20 of the Council of Europe Statute, i.e. with a two-thirds majority of the Representatives casting a vote, and with a majority of the Representatives entitled to sit on the Committee. It also provides that the resolutions containing such invitations shall receive the unanimous agreement of the members of the Council of Europe who have ratified the Convention.

Paragraph 2

341. The provisions of this paragraph are identical with those in the model final clauses adopted by the Committee of Ministers.

Article 78 – Duration of the Convention and denunciation

342. In general the provisions of this article follow the model final clauses referred to above.

Article 79 – Maintenance of rights acquired or in the course of acquisition in case of denunciation of the Convention

343. This article deals with the maintenance of rights which have been acquired or are in course of acquisition under the provisions of the Convention, in the event of its denunciation by a Contracting Party.

Paragraph 1

344. This paragraph provides that denunciation of the Conven.tion by a Contracting Party will not affect rights acquired under the provisions of the Convention.

Paragraph 2

345. This paragraph ensures the maintenance, after such denunciation of the Convention, of rights in course of acquisition. It follows Article 22 of the International Labour Convention No. 48 on the Conservation of Migrants' Pension Rights and a number of provisions of other bilateral or multilateral social security instruments. As in Article 22 of that Convention, this paragraph provides that rights in course of acquisition shall be maintained either by the conclusion of agreements to this effect between the Contracting Parties and the State denouncing the Convention, or, failing that, by the legislation applied by the institution concerned.

Article 80 – Supplementary Agreement for the application ot the Convention

346. This article provides that the application of the Convention is governed by a Supplementary Agreement open to signature by member States of the Council of Europe.

Paragraph 2 of this article provides that the Contracting Parties or, in so far as their constitutional provisions so permit, their competent authorities shall make any other arrangements necessary for the application of the Convention. It should be noted that this applies particularly to those parts thereof which come into force only after the conclusion of separate bilateral or multilateral agreements.

The Convention, as well as the Supplementary Agreement, cannot be regarded as an independent legal instrument because the States which ratify or accept it are bound to ratify or accept the Agreement at the same time, as provided for in paragraph 2 of Article 94 of the latter instrument.

Paragraph 3 of Article 80 provides that the Contracting Parties shall comply with both requirements simultaneously.

Paragraph 4 extends this obligation to States acceding to the Convention under the provisions of Article 77 of that instrument.

Paragraph 5 provides that any Contracting Party which denounces the Convention must at the sarne time denounce the Supplementary Agreement.

Article 81 – Notifications

347. This article has been drawn up following the above-cited model final clauses.