



Explanatory Report to the European Social Charter (Revised)

Strasbourg, 3.V.1996

Introduction

1. On 5 November 1990 an Informal Ministerial Conference on human rights was held in Rome. One of the topics discussed was the European Social Charter, with the result that the Council of Europe's Committee of Ministers was invited to take the necessary steps so that a detailed study of the role, contents and operation of the European Social Charter might be undertaken as soon as possible.
2. At their 449th meeting (November–December 1990), the Ministers' Deputies decided to authorise the convening of an ad hoc committee, the Committee on the European Social Charter (Charte-Rel). Under its terms of reference, the Committee was instructed to make proposals for improving the effectiveness of the European Social Charter, and particularly the functioning of its supervisory machinery.
3. The Committee was composed of experts appointed by each member state. Its meetings were attended in a non-voting capacity by representatives of the Parliamentary Assembly, the International Labour Organisation, the European Trade Union Confederation and the Union of Industrial and Employers' Confederations of Europe. The Committee of Independent Experts and the Governmental Committee of the European Social Charter were also involved in the work along with several other Council of Europe committees.
4. At its twelfth meeting (10-14 October 1994), the Charte-Rel Committee adopted a draft Revised European Social Charter and decided to submit it to the Committee of Ministers for adoption.
5. After consulting the Committee of Independent Experts and the Parliamentary Assembly, the Committee of Ministers adopted the text entitled the Revised European Social Charter on 3 April 1996 and opened it for signature on 3 May 1996.
6. According to the practice of the Council of Europe, this explanatory report has no binding value and was drafted only with a view to explaining the content of the Revised Charter. The Committee of Ministers authorised its publication when adopting the Revised European Social Charter.
7. From the outset, the aim has been that amendments to the text of the Charter should not represent a lowering of the level of protection provided for therein. It was also agreed that the reform would involve taking account both of developments in social and economic rights as reflected in other international instruments and in the legislation of member States and also of social problems not covered by the other international instruments in force. Furthermore, all amendments were to be made bearing in mind the need to ensure equal treatment of men and women.

8. The Revised European Social Charter takes account of developments in labour law and social policies since the Charter was drawn up in 1961. The Revised Charter is a comprehensive international treaty which brings together in a single instrument all the rights guaranteed in the Charter and the 1988 Additional Protocol, along with the amendments to these rights and the new rights adopted by the Charte-Rel Committee.

The instrument has been drafted in such a way as to be autonomous, but with the same supervisory machinery as the Charter. It does not conflict with the Charter but is intended to eventually replace it.

9. The Revised Charter presents Parts I and II in the same way as they are presented in the Charter and the 1988 Additional Protocol, adding the new rights at the end of each part. This presentation was deemed preferable since it had the advantage of being familiar, of avoiding confusion with the original texts and the existing case law and of facilitating the presentation of national reports. This will also allow new rights to be added in the future without changing the structure of the text.

10. The Revised European Social Charter does not provide for denunciation of the former Charter. However, if a Contracting State accepts the provisions of the Revised Charter, the corresponding provisions of the initial Charter and its Protocol cease to apply to that State. In this way, States are not simultaneously bound by undertakings at different levels.

11. The terminology used in the Revised Charter is in conformity with the model final clauses adopted by the Committee of Ministers in 1981, in particular the term "Contracting Party" in the Charter has been replaced by "Party".

Commentaries to the articles of the revised Charter

Part I

12. This part corresponds to Part I of the Charter. Similarly to this Part I, it contains a general statement of rights and principles setting out the aim for the policy of the Parties and each point of Part I corresponds to the Article of Part II with the same number.

13. As in the case of the Charter, Part I contains a declaration of a political nature which has to be accepted as a whole, irrespective of whether the corresponding provisions of Part II are accepted or not.

14. The wording of points 8, 15 and 17 has been brought into line with the revised Articles 8, 15 and 17. The amendments made to Articles 2, 3, 7, 10, 11, 12 and 19 have not required that any changes be made to Part I.

15. Points 20 to 23 have been taken from the 1988 Additional Protocol to the Charter and have not been amended.

16. Points 24 to 31 correspond to the new Articles contained in the Revised Charter.

Part II

17. Part II contains the economic and social rights provided for by the Revised European Social Charter. As in the case of the Charter, those rights may be accepted selectively, subject to a minimum number of acceptances (see Article A below).

18. As there is no explanatory report to the Charter, it was considered preferable not to explain the rights contained in Part II of the Revised Charter. Only the differences with the Charter will therefore be mentioned, as well as the new provisions set out.

19. Articles 1 to 19 reproduce the text of the corresponding Articles of the Charter with the following differences:

Article 1 – The right to work

20. No amendment.

Article 2 – The right to just conditions of work

21. Two paragraphs have been amended (paragraphs 3 and 4), the others remain unchanged:

Paragraph 3

22. This provision provides for an increase in annual holidays, from the two weeks provided by the Charter to four weeks.

Paragraph 4

23. This provision, which in the Charter provides for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations, has been amended so as to reflect present-day policies which aim to eliminate the risks to which workers are exposed. The idea is that additional paid holidays or reduced working hours should only be provided where it has not been possible to eliminate or reduce sufficiently the risks inherent in dangerous or unhealthy occupations. This provision should be seen as a complement to the revised Article 3, which emphasises the prevention of occupational accidents.

24. Two new paragraphs have been added:

Paragraph 6

25. The obligation on the Parties under this paragraph is to ensure that workers are informed about the essential aspects of their contract or employment relationship.

26. The "essential aspects" of the contract or employment relationship of which workers shall be informed have not been specified in the provision. However, reference as to the minimum requirements in this respect may be found in European Community Directive (91/533) on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (Article 2). In principle the provision covers all workers, but the appendix stipulates that two exceptions can be made, namely Parties may provide that the provisions shall not apply to workers whose contract of employment covers a very short period of time or whose contract or employment relationship is of a casual or of a specific nature provided it is justified by objective considerations.

Paragraph 7

27. The general recognition of the fact that night work places special constraints on workers, both men and women led to the inclusion of this paragraph in the Revised Charter. Furthermore, whereas Article 8, paragraph 4.a of the Charter provided that the employment of women workers in general for night work in industrial employment should be regulated, the corresponding provision in the Revised Charter protects women only in the case of maternity. The other women previously protected by Article 8, paragraph 4.a of the Charter are therefore now covered by Article 2, paragraph 7 of the Revised Charter on the same conditions as men, in conformity with the principle of equality. It should however be pointed out that the new provision does not require the existence of regulations.

28. The provision contains no definition of night work, which is to be provided by national legislation or practice.

Article 3 – The right to safe and healthy working conditions

29. This Article contains two new paragraphs (paragraphs 1 and 4) and two paragraphs (paragraphs 2 and 3) which, together with the new preamble of the Article correspond, respectively, to Article 3, paragraphs 1 and 3 of the Charter and to Article 3, paragraph 2 and 3 of the Charter.

30. The requirement for consultation with employers' and workers' organisations which is contained in Article 3, paragraph 3 of the Charter has been included in the preamble of Article 3 of the Revised Charter and consequently applies to the four paragraphs contained in Article 3 of this instrument.

Paragraph 1

31. This paragraph obliges the Parties to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. It emphasises that the aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health, *inter alia*, by minimising risks.

Paragraph 2

32. This paragraph corresponds to Article 3, paragraphs 1 and 3 of the Charter.

Paragraph 3

33. This paragraph corresponds to Article 3, paragraphs 2 and 3 of the Charter.

Paragraph 4

34. This provision provides that the Parties shall promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

35. The terms "occupational health services" shall include the French concept of *médecine du travail*.

36. In the appendix it is provided that for the purposes of this provision the function, organisation and conditions of operation of occupational health services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4 – The right to a fair remuneration

37. No amendment.

Article 5 – The right to organise

38. No amendment.

Article 6 – The right to bargain collectively

39. No amendment.

Article 7 – The right of children and young persons to protection

40. Three paragraphs have been amended (paragraphs 2, 4 and 7), the others remain unchanged:

Paragraph 2

41. The minimum age required by this provision for admission to employment in prescribed occupations regarded as dangerous or unhealthy, which was not specified by the Charter, has been fixed at 18 years in the Revised Charter. This provision has been inspired by the Council of the European Communities Directive 94/33 on the protection of young people at work.

Paragraph 4

42. The minimum age-limit provided for by this provision for regulation of the working hours has been raised to 18 years as compared to the 16 years provided for in the Charter.

Paragraph 7

43. The length of annual holidays with pay for young workers has been increased, from the three weeks provided in the Charter to four weeks.

Article 8 – The right of employed women to protection of maternity

44. In order to take into account the principle of equality, this Article, which corresponds to Article 8 of the Charter, has been modified so as to protect women exclusively in the case of maternity. This is a result, *inter alia*, of the changes made to the heading and to the introductory sentence. As stated in the heading of the provision it applies only to employed women.

45. Three paragraphs have been amended (1, 2 and 4), paragraph 3 remains unchanged:

Paragraph 1

46. As compared to the Charter, the length of maternity leave has been increased from twelve to fourteen weeks.

Paragraph 2

47. This provision of the Revised Charter extends the minimum period of protection against dismissal for pregnant women as compared to the corresponding provision of the Charter. The period runs from the time a woman notifies her employer that she is pregnant until the end of her maternity leave.

48. There are some exceptions to the protection against dismissal during this period. These exceptions have been included in an appendix to the provision. They cover, *inter alia*, cases of serious misconduct, cases in which the enterprise ceases to operate and cases in which the period prescribed in the employment contract has expired. These exceptions correspond to the case law of the Committee of Independent Experts.

Paragraph 4

49. This paragraph amends Article 8, paragraph 4.a of the Charter. The basic idea behind it, which has been taken from ILO Convention No. 171 (Night Work) of 1990 and from European Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, is that regulations on the employment of women for night work are needed only in the case of maternity. It is thus more restrictive than Article 8, paragraph 4.a of the Charter, which concerns the regulation of night work for women in general, but at the same time it is wider in its scope as it is not limited to regulating night work for women in industrial employment. Article 2, paragraph 7 offers protection for both men and women performing night work.

50. The definition of the women workers covered by the provision has been inspired by European Community Directive 92/85. "Pregnant women" in this context shall mean pregnant workers who inform their employer of their condition, in accordance with national legislation and/or practice. By "women who have recently given birth" is meant workers who have recently given birth within the meaning of national legislation and/or national practice and who inform their employer of their condition in accordance with that legislation and/or practice. Finally, "women who are nursing their infants" refers to workers who are breastfeeding within the meaning of national legislation and/or national practice and who inform their employer of their condition in accordance with that legislation and/or practice.

Paragraph 5

51. This paragraph, which amends Article 8, paragraph 4.b of the Charter, limits the prohibition of employment of women in underground mining and in all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature to the case of maternity as defined in the preceding paragraph. It requires Parties to take appropriate measures to protect the employment rights of the women concerned. By this it has been understood that such workers should be given the possibility to transfer to suitable work, or to be granted leave from work if a transfer is not feasible, with the payment of salary or other adequate allowance and without loss of status, seniority or access to promotion.

Article 9 – The right to vocational guidance

52. No amendment.

Article 10 – The right to vocational training

53. One paragraph has been added (paragraph 4); the others remain unchanged, therefore paragraph 4 of the Charter has become paragraph 5 of the Revised Charter.

Paragraph 4

54. The idea behind this new paragraph, which has been added to Article 10, is that it is necessary to adopt "special" measures for the retraining and reintegration of the long-term unemployed, as their possibilities of re-entering the labour market are particularly few.

Article 11 – The right to protection of health

55. One paragraph has been amended (paragraph 3); the others remain unchanged:

Paragraph 3

56. This paragraph corresponds to Article 11, paragraph 3 of the Charter, with the addition of the word "and accidents". What is required from the Parties is to follow a policy of accident prevention, but each State will be able to decide on its own measures to that end.

Article 12 – The right to social security

57. One paragraph has been amended (paragraph 2); the others remain unchanged:

Paragraph 2

58. Reference is made in this paragraph to the European Code of Social Security. The difference between ILO Convention No. 102 and the European Code of Social Security relates to the minimum requirements as to how many parts must be accepted for the ratification of these instruments (three for the Convention; six for the Code). The ratification of the Revised Code requires a higher standard of social security than is required for the ratification of ILO Convention No. 102.

59. The authors of the text considered that the European Code of Social Security (Revised) could be taken into account in relation to Article 12, paragraph 3.

Article 13 – The right to social and medical assistance

60. No amendment.

Article 14 – The right to benefit from social welfare services

61. No amendment.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

62. Article 15 has been amended.

63. The protection of the disabled afforded by this Article has been extended as compared to that afforded by Article 15 of the Charter, as it no longer applies only to vocational rehabilitation but to the right of persons with disabilities to independent social integration, personal autonomy and participation in the life of the community in general. The words "effective exercise of the right to independence" contained in the introductory sentence to the provision imply, *inter alia*, that disabled persons should have the right to an independent life.

64. Under this provision Parties must aim to develop a coherent policy for people with disabilities. The provision takes a modern approach to how the protection of the disabled shall be carried out, for example by providing that guidance, education and vocational training be provided whenever possible in the framework of general schemes rather than in specialised institutions, an approach which corresponds to that of Recommendation No. R (92) 6 of the Committee of Ministers of the Council of Europe. It not only provides the possibility, but to a large extent obliges Parties to adopt positive measures for the disabled.

65. It is understood that the term "sheltered employment" in paragraph 2 also covers working co-operatives.

Article 16 – The right of the family to social, legal and economic protection

66. The text of the Article itself has not been amended, although as the protection offered to "mothers" by Article 17 of the Charter has not been maintained in the new version of Article 17 contained in the Revised Charter, Article 16 of the latter instrument will now cover this group. It must be pointed out that the "mothers" in question may be single parents, but they may also be living in a couple. The protection particularly concerns women who are not covered by Article 8 and/or who are not covered by any social security scheme providing the necessary financial assistance during a reasonable period before and after confinement, as well as adequate medical care during confinement.

67. The Revised Charter contains a statement in the appendix to this provision, to the effect that the protection afforded by it also covers single-parent families.

Article 17 – The right of children and young persons to social, legal and economic protection

68. Article 17 has been amended.

69. Whereas the general protection of children in the Charter is contained in Article 7, which refers almost exclusively to the protection of children at work, this Article of the Revised Charter offers protection for children and young persons outside the context of work and addresses the special needs arising from their vulnerability.

70. This provision protects children, irrespective of such factors as their birth status and the marital status of their parents. In confirmation of the case law of the Committee of Independent Experts, according to which certain rights such as the right of children to inheritance are covered by Article 17 of the Charter, the word "legal" has been added to its title.

71. The appendix to Article 17 defines the scope of the provision in that it covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier. The provision covers these children without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

Paragraph 1

72. The word "parents" in paragraph 1.a should be understood as also including legal guardians or other individuals legally responsible for the child.

Paragraph 2

73. Under this paragraph, children and young persons have the right to access to free primary and secondary education, which does not imply that they have a right to exercise this right for example in a private school.

74. It follows from the appendix that this paragraph does not imply an obligation to provide compulsory education up to the age of 18 years. The reason that there is no mention of compulsory education in the paragraph itself is that in some states only primary education is compulsory, whereas in others secondary education is also compulsory.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

75. No amendment.

Article 19 – The right of migrant workers and their families to protection and assistance

76. Paragraphs 1 to 10 have not been amended.

Paragraph 6

77. Only the appendix to paragraph 6, which gives the definition of the term "family of a foreign worker", has been amended as compared to the appendix to the corresponding provision of the Charter. Instead of covering the migrant worker's wife, it now covers the spouse of the migrant worker, whether a wife or a husband. Furthermore, the appendix now provides that unmarried children of migrant workers are covered as long as they are considered to be minors by the receiving State and are dependent on the migrant worker. This amendment has been added as the age of majority is 18 years in most Contracting Parties, whereas the Charter provides for an age-limit of 21 years for the entry of children of migrant workers. The words "at least" have been maintained to indicate that States may decide to extend the notion of the family of the migrant worker.

78. Two new paragraphs have been added:

Paragraph 11

79. This paragraph has been considered important for the protection of migrant workers' health and safety at work and for the guarantee of their rights in other respects relating to work, as well as in facilitating their integration and that of their families.

Paragraph 12

80. The underlying reason for this paragraph is the importance for the children of migrant workers of maintaining their cultural and linguistic heritage, *inter alia*, in order to provide them with a possibility of reintegration if and when the migrant worker returns home.

81. Articles 20 to 23 correspond to the provisions of Articles 1 to 4 of the Additional Protocol of 1988. Paragraphs 2, 3 and 4 of Article 1, paragraph 2 of Article 2 and paragraph 2 of Article 3 have been moved to the appendix for the purposes of harmonisation. This change does not affect the nature and scope of the legal obligations accepted under these provisions.

82. The explanatory report to the Additional Protocol of 1988 remains relevant.

83. Articles 24 to 31 are new provisions which guarantee the following rights:

Article 24 – The right to protection in cases of termination of employment

84. This provision, which must be accepted in its entirety, sets out two general principles:

- a. the right not to be dismissed unless there are valid grounds;
- b. the right to adequate compensation or other relief in cases of unfair dismissal.

85. It further establishes the right for a worker who considers that his rights under paragraph a have been interfered with to an appeal to obtain, if appropriate, his rights under paragraph b.

86. The provision has been inspired by ILO Convention No. 158 (Termination of Employment) of 1982. As to the nature of the impartial body mentioned in the last paragraph of the Article, reference is made to Article 8 of the ILO Convention.

87. The appendix clarifies the terms "termination of employment" and "terminated" which shall mean termination of employment at the initiative of the employer.

88. The second paragraph of the appendix deals with the scope *ratione personae* of the provision. It makes it possible for the Parties to exclude some categories of employed persons from its scope.

89. The third paragraph of the appendix contains a non-exhaustive list of non-valid grounds for termination of employment.

90. The fourth paragraph of the appendix clarifies that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

91. This provision has been inspired by ILO Convention No. 173 (Protection of Workers' Claims (Employers' insolvency)) of 1992 and of European Community Directive 80/987 on the approximation of the laws of the member States relating to the protection of employees in the event of the insolvency of their employer. It lays down the general principle of the right of workers to protection of their claims in the event of the insolvency of their employer.

92. It provides not only for the possibility of a guarantee institution, but also for any other form of protection. The possibility of a combination of the existence of privileges and of an organisation to guarantee the payment of salaries is not excluded by this provision. In fact, a guarantee institution alone ensures the protection of workers as it secures the payment of salaries owed provided that they are superior to the assets of the enterprise. The establishment of such an institution, which will take over the rights of the workers to whom it has paid an advance, is perfectly compatible with a system of privileges.

93. The first paragraph of the appendix prescribes that certain categories of workers may be excluded by reason of the special nature of their employment relationship. The workers concerned are particularly public employees and managerial staff in small undertakings.

94. The second paragraph of the appendix states that the term "insolvency" must be determined by national law and practice. It is understood that this term shall include situations in which proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of his creditors, but may also apply to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example, where the amount of the employer's assets is recognised as being insufficient to justify the opening of insolvency proceedings.

95. The third paragraph of the appendix sets out the minimum requirement according to which claims shall be protected. The "other types of paid absence" referred to in sub-paragraph c have the same sense as in the ILO Convention.

96. Finally, the fourth paragraph of the appendix provides that national laws or regulations may limit the protection of workers' claims to a prescribed amount, which must nevertheless be of a socially acceptable level.

Article 26 – The right to dignity at work

97. The purpose of this Article is to guarantee workers the right to dignity at work and in connection with work. It emphasises the promotion of awareness and prevention of sexual harassment and victimisation, but does not require that Parties ensure protection against such conduct. In addition, it follows from the appendix that Parties do not need to enact legislation. However, they are required to take "all appropriate measures" to protect workers.

98. The two paragraphs contained in the Article may be accepted separately.

Paragraph 1

99. This paragraph deals exclusively with sexual harassment, which may be defined as unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of workers, including the conduct of superiors and colleagues.

Paragraph 2

100. This paragraph aims at forms of victimising conduct affecting the right to dignity at work (victimisation, defined as bullying) other than sexual harassment and has been defined in the text of the provision itself. The definition has been taken from existing national regulations dealing with this problem and comprises recurrent reprehensible or distinctly negative and offensive acts by superiors and colleagues affecting the dignity of a worker in the workplace or in relation with work. An example illustrating this would be that of a worker who for reasons of hostility on the part of the employer and/or his colleagues, is systematically excluded from discussions relating to the organisation of work to which his colleagues are invited to take part. Another example could be not giving a worker an office or duties corresponding to his grade and functions for similar reasons.

101. The appendix specifies that this paragraph does not cover sexual harassment.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

102. This provision provides for equality of opportunity and treatment for workers with family responsibilities. It has been inspired by ILO Convention No. 156 (Workers with Family Responsibilities) of 1981 as well as Recommendation No. 165 (Workers with Family Responsibilities) of 1981.

103. The appendix to this Article gives a definition of men and women workers with family responsibilities. It refers to national legislation for a definition of the terms "dependent children" and "other members of their immediate family who clearly need their care and support".

Paragraph 1

104. The term "appropriate" in this paragraph shall mean suitable to national conditions and possibilities.

105. Sub-paragraph b corresponds to Article 4, paragraph b of the ILO Convention.

Article 28 – The right of workers’ representatives to protection in undertaking and facilities to be accorded to them

106. This provision of the Revised Charter aims to protect workers’ representatives in the enterprise, a group which is not covered by Article 5 unless the representative is also a trade union representative. The provision has been inspired by ILO Convention No. 135 (Workers’ Representatives) of 1971.

107. A definition of the term "workers’ representatives" is given in the appendix to the Article which describes it as meaning persons who are recognised as such under national legislation or practice. This definition is based on that of the appendix to Articles 21 and 22. It is understood that national legislation or practice may provide that workers’ representatives are elected representatives or trade union delegates.

108. Sub-section b of the Article, which corresponds to Article 2 of the ILO Convention, provides that workers’ representatives shall be afforded such facilities as will enable them to carry out their functions. The only limitation in the context of the Revised Charter is that account shall be taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned. Examples of facilities to be granted to workers’ representatives may be found in ILO Recommendation No. 143 (Workers’ Representatives) of 1971.

Article 29 – The right to information and consultation in collective redundancy procedures

109. Under this Article the Parties undertake to ensure that employers inform and consult workers’ representatives prior to collective redundancies. When drafting this Article the Committee examined European Community Directive 92/56 of 1992 amending Directive 75/129 on the approximation of the laws of the member States relating to collective redundancies as well as ILO Convention No. 158 (Termination of Employment) of 1982. The information and consultation shall concern the possibilities of avoiding collective redundancies, limiting their number or mitigating their consequences. Recourse to social measures providing aid for redeploying or retraining the workers concerned is mentioned as an example of ways of mitigating the consequences of collective redundancies.

110. It is understood that recourse to social measures in this context is not solely the responsibility of the employer.

111. A definition of the term "workers’ representatives" is given in the appendix to the Article as meaning persons recognised as such under national legislation or practice. This definition is based on that of the appendix to Articles 21 and 22.

Article 30 – The right to protection against poverty and social exclusion

112. This Article provides for a comprehensive and co-ordinated approach, with relief of poverty and social exclusion as the essential and explicit aim. It also provides that measures corresponding to this approach are reviewed and adapted to new situations.

113. The purpose of the Article is not to repeat the juridical aspects of the protection covered by other Articles of the Revised Charter although Parties may naturally refer to information given in respect of other provisions when reporting under this provision.

114. The term "poverty" in this context covers persons who find themselves in various situations ranging from severe poverty, which may have been perpetuated for several generations, to temporary situations entailing a risk of poverty. The term "social exclusion" refers to persons who find themselves in a position of extreme poverty through an accumulation of disadvantages, who suffer from degrading situations or events or from

exclusion, whose rights to benefit may have expired a long time ago or for reasons of concurring circumstances. Social exclusion also strikes or risks to strike persons who without being poor are denied access to certain rights or services as a result of long periods of illness, the breakdown of their families, violence, release from prison or marginal behaviour as a result for example of alcoholism or drug addiction.

115. It must be noted that the Article does not expressly mention the guarantee of minimum resources. The reason is that such protection is already provided for by Article 13 of the Revised Charter and covered by this Article where reference is made in paragraph a to "effective access to [...] social assistance".

116. Among the obligations subscribed to under Article 30, a series of measures is included, which may or may not imply financial benefits, and which concern both persons in a situation of exclusion and those who risk finding themselves in such a situation. States subscribing to this provision are encouraged to restrict financial benefits to those who cannot help themselves by their own means.

117. The review of mechanisms under paragraph b of the Article is of a general character and each Party shall decide how it should be organised, depending on national conditions. This review may, in order for the measures mentioned in the provision to be effective, include consultations with the social partners and various other organisations, including organisations representing persons who find themselves in a situation of poverty or social exclusion.

Article 31 – The right to housing

118. In order to ensure a right to housing, this provision obliges Parties to take measures in so far as possible aiming to progressively eliminate homelessness, to promote access to housing of an adequate standard and to make the price of housing accessible to those without adequate resources. By housing of an "adequate standard" is meant housing which is of an acceptable standard with regard to health requirements. For a definition of the terms "without adequate resources" reference is made to Article 13.

119. It will be for the competent authorities of each State to decide, at national level, on appropriate housing standards.

Part III

Article A – Undertakings

120. Article A, concerning undertakings, follows the same pattern as the corresponding provision, that is Article 20 of the Charter.

121. As is the case in the Charter, paragraph 1.a obliges States to consider themselves bound by all the aims put forward in Part I.

122. Paragraph 1.b determines the extent of the hard core of the Revised Charter which comprises Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20. In relation to the Charter, two new Articles, 7 and 20, have been added in view of their particular importance.

123. Consequently, the number of hard core Articles which have to be accepted by Parties has been increased to six.

124. Following a proposal from the organisations representing management and labour, the Committee had originally planned to make Articles 5 and 6 of the Revised Charter compulsory. This would have meant that no State could have ratified the Revised Charter without agreeing to be bound by these two provisions. This was motivated by the particular and fundamental importance which these two provisions have always had for the protection of

economic and social rights. However, the Committee finally decided not to make acceptance of Articles 5 and 6 compulsory, in order not to detract from the existing flexibility of this legal instrument, which is entirely constructed on an à la carte basis. The Committee also considered that making acceptance of Articles 5 and 6 compulsory might slow down the ratification of the Revised Charter. It therefore decided against doing so, with a view to enabling more States to accept the new and amended provisions in the Revised Charter. However, States which ratify the Revised Charter must take all possible steps to accept Articles 5 and 6 as rapidly as possible.

125. Paragraph 1.c relates to the corresponding provision in Article 20 of the Charter. It establishes the minimum number of Articles or paragraphs which a state must accept on ratification of the Revised Charter. The Committee thought it preferable to keep the same proportion between the minimum number of provisions which must be accepted and the total number of provisions contained in the Revised Charter. Accordingly, it decided that States must accept not less than sixteen Articles, instead of ten as previously, or sixty-three paragraphs, instead of forty-five as previously.

126. Paragraphs 2, 3 and 4 of Article A reiterate, *mutatis mutandis*, the corresponding provisions of the Social Charter.

Article B – Links with the European Social Charter and the Additional Protocol of 1988

127. The purpose of paragraph 1 of Article B is to ensure that the undertakings entered into by States under the Charter are replaced by those which they have accepted under the Revised Charter, upon ratification of the latter. In practice this means that, for States which have ratified the Revised Charter, Parts I and II of the latter will replace Parts I and II of the Charter. For reasons of clarity and legal certainty, it is essential that States should not be bound by two sets of substantive provisions, some of which may be at variance as a result of the revision of the Charter itself.

128. Paragraph 2 has another specific purpose, namely to ensure that when States ratify the Revised Charter they do not implicitly denounce certain provisions of the Charter. States which accepted more than the minimum number of provisions established by Article 20 of the Charter might be tempted, when ratifying the Revised Charter, not to be bound by certain provisions of the Revised Charter corresponding to provisions of the Charter which they had previously accepted. This might apply, for example, to provisions with which in the opinion of the supervisory bodies the States in question do not comply. Of course, it will always be possible for States to denounce certain provisions of the Charter, in accordance with the relevant provisions thereof, before ratifying the Revised Charter. However, the denunciation must be explicit, not implicit.

129. For this purpose, the appendix to Article B, paragraph 2 specifies which provisions of the Revised Charter correspond to the provisions of the Charter. The term "correspond" is used here in the sense of "to replace". Generally speaking, each Article of the Revised Charter corresponds to the Article with the same number in the Charter. However, there are some exceptions, which are listed in the appendix. The appendix specifies which undertakings in the new Charter must be accepted in order to respect the principle of correspondence laid down in paragraph 2. As regards the Protocol, Articles 20, 21, 22 and 23 of the Revised Charter correspond to Articles 1, 2, 3 and 4 of the Protocol.

Part IV

Article C – Supervision of compliance with the undertakings contained in this Charter

130. Given that the two Charters are to co-exist, at least during a transitional period, the drafters of the Revised Charter thought it essential that the two legal instruments be supervised in the same manner. Consequently, they did not wish to create separate supervision machinery for the Revised Charter and instead simply specified in Article C that undertakings entered into under the Revised Charter would be subject to the same supervision procedure as that provided for in the Charter.

131. Furthermore, this provision is of an open-ended nature and the supervisory procedure will therefore be the same as that which applies to the Charter at any given time. In so doing, the drafters of the Revised Charter wished to adopt a neutral attitude with regard to the Turin Protocol amending the Charter's supervision machinery. In view of some states' reservations and difficulties in accepting the new supervision procedure set out in this Protocol, they decided that the Revised Charter should not interfere with this issue. Consequently, before the Turin Protocol comes into force, the Revised Charter will use the supervisory machinery applicable to the Charter, and after it comes into force, it will use the new supervision procedure. In addition, since States which ratify the Revised Charter are still Parties to the Charter, the Turin Protocol will only come into force when it has been ratified by all twenty States which are currently Parties to the Charter. The Revised Charter therefore has no influence on the number of ratifications necessary for the entry into force of the Turin Protocol.

Article D – collective Complaints

132. The Committee considered it necessary to include a provision in the Revised Charter providing that a State which had ratified the Additional Protocol providing for a system of collective complaints, before ratifying the Revised Charter, should be obliged to accept the supervision of its obligations under the Revised Charter in accordance with the procedure set out in the Protocol. It is important that ratification of the Revised Charter should not in practice result in denunciation of the Protocol on collective complaints. In addition, given that the Parties' undertakings in Parts I and II of the Charter are replaced by the undertakings in the Revised Charter, it would be logical for a State which has ratified the Protocol on collective complaints to accept that such complaints should cover the undertakings entered into under the Revised Charter.

133. Paragraph 2 is intended to allow States which ratify the Revised Charter before ratifying the Protocol on collective complaints to agree to be bound by the latter by declaration. The main purpose of this provision is to prevent States from having to submit too many legal instruments to their national parliaments for ratification. With a view to simplification, a State may therefore declare itself bound by the Protocol on collective complaints when it ratifies the Revised Charter.

134. It is obvious, however, that the provisions of paragraph 2 can only apply once the Protocol on collective complaints has come into force.

Part V

Article E – Non-discrimination

135. This new Article of the Revised Charter confirms the case law of the Committee of Independent Experts in respect of the Charter, that is that the non-discrimination clause in the preamble to the Charter applies to all the provisions of the Charter. Accordingly, the Revised Charter does not allow discrimination on any of the grounds listed in this Article in respect of any of the rights contained in the instrument.

136. The Article has been based on Article 14 of the European Convention on Human Rights which contains a more extensive enumeration of grounds than the preamble to the Charter. The grounds enumerated in the Article are the same as those contained in the preamble to the Charter, with the addition of some grounds mentioned in the Convention. However, with respect to some of these latter grounds, the Committee of Independent Experts has already indicated in its case law that they apply to the rights guaranteed under the Charter. The words "such as" contained in the provision indicate that the list of grounds on which discrimination is not permitted is not exhaustive. It is understood that this provision prohibits, *inter alia*, the refusal to employ women on grounds of pregnancy. It also provides for non-discrimination in access to health care. These are merely two examples. The appendix to the new Article provides that differential treatment based on an objective and reasonable justification shall not be deemed to be discriminatory. An objective and reasonable justification may be such as the requirement of a certain age or a certain capacity for access to some forms of education. Whereas national extraction is not an acceptable ground for discrimination, the requirement of a specific citizenship might be acceptable under certain circumstances, for example for the right to employment in the defence forces or in the civil service.

137. In addition, it is understood that this provision must not be interpreted so as to extend the scope *ratione personae* of the Revised Charter which is defined in the appendix to the instrument and which includes foreigners only in so far as they are nationals of other parties lawfully resident or working regularly within the territory of the Party concerned.

Article F – Derogations in time of war or public emergency

Article G – Restrictions

Article H – Relations between the Charter and domestic law or international Agreements

138. These three Articles correspond, *mutatis mutandis*, to the provisions of Articles 30, 31 and 32 of Part V of the Charter.

Article I – Implementation of the undertakings given

139. The model for this provision has been Article 7 of the Additional Protocol to the Charter of 1988. The first paragraph provides that without prejudice to the methods of implementation foreseen in Articles 1 to 31 of Part II of the Revised Charter, this provision may be implemented by any of the means enumerated in the paragraph. This composition has been chosen so as not to interfere with the case law of the Committee of Independent Experts according to which a certain form of implementation, such as legislation, is sometimes required. The word "shall" indicates that the method chosen must be efficient.

140. The second paragraph provides that in respect of the provisions enumerated therein, the undertakings deriving from these provisions are considered as being fulfilled as long as they are applied to the great majority of the workers concerned. This paragraph contains all the provisions included in Article 33 of the Charter and Article 7, paragraph 2 of the Additional Protocol to the Charter, with the addition of Article 2, paragraph 7 of the Revised Charter.

Article J – Amendments

141. Having noted that Article 36 of the Charter had never been used, *inter alia*, because it was very restrictive, the Committee wanted to introduce an amendment clause into the Revised Charter which would allow for the subsequent development of the treaty. This provision is based on texts already used by the Council of Europe for other European treaties.

142. According to paragraph 2, all amendments shall be examined by the Governmental Committee, before being submitted for approval to the Committee of Ministers after consultation with the Parliamentary Assembly. The Committee of Ministers shall take its decision by a two-thirds majority; after approval by the Committee of Ministers, the text shall be communicated to the Parties for acceptance.

143. If the amendment relates to Parts I and II of the Revised Charter it shall enter into force when three States have informed the Secretary General that they accept it. In this connection, it should be noted that such amendments must be intended to extend the rights guaranteed by the Charter. In addition, the appendix to this provision stipulates that the term "amendment" also covers the addition of new Articles containing new rights; this issue had been raised at a Charte-Rel Committee meeting.

144. On the other hand, amendments to Parts III to VI shall not enter into force until they have been accepted by all the parties to the Revised Charter.

145. It was also agreed that member States of the Council of Europe which are parties neither to the Charter nor to the Revised Charter should be able to participate in work on amending the Revised Charter, but that this would be for the Committee of Ministers to decide once an amendment procedure had commenced.

Part VI

146. Part VI contains the text of the final clauses of the Revised Charter. It is modelled on the final clauses adopted by the Committee of Ministers of the Council of Europe for treaties drawn up within the Organisation, although it does also reproduce some of the provisions appearing in Part VI of the Charter.

Appendix

Scope of the revised European Social Charter in terms of persons protected

147. The scope *ratione personae* of the Charter has been defined in the appendix according to which the Charter includes foreigners "only in so far as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned".