



## **Explanatory Report to the European Code of Social Security (Revised)**

Rome, 6.XI.1990

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### **General remarks**

#### **I. Background**

1. At its first session, from 10 August to 8 September 1949, the Consultative Assembly of the Council of Europe debated extensively ways and means of improving the living standards of Europeans in general, and employees and their families in particular. Speakers from all member States agreed unanimously that, as with political, economic and technological measures, the development of social security as part of an overall social policy could be of paramount importance in improving the living standards of the populations of the Council of Europe countries.

2. Among the different measures for fostering the development of social security in these countries, the Assembly proposed in its Recommendation No. 28 of 24 August 1950 the establishment of a European Code of Social Security:

- "1. The Assembly declares itself in favour of the establishment of a European Code of Social Security, the effect of which would be not the standardisation of the social security legislation in the different countries, but the raising, by various methods, of social security in every country to an equally high level, in accordance with the general principles set forth in the Appendix to the present Document.
2. The Assembly is of the opinion that this Code should be prepared as a Convention by the Council of Europe, in collaboration with the ILO<sup>1</sup>, whose Documentation must be used as the basis for all the work in the field of the Council of Europe.
3. The Convention should be adopted by a European Labour Conference, convened according to the rules adopted by the ILO, on the basis of a threefold representation of governments, employers and workers.
4. Recommends that the Committee of Ministers take the necessary steps, in conjunction with the ILO, for the preparation and summoning of such a conference".
3. At its 6th session, on 5 November 1950, the Committee of Ministers of the Council of Europe approved the recommendation in principle and referred it to the Committee of Experts on Social Security.
4. While the Experts were engaged in the preparatory work for the drafting of the European Code of Social Security, the International Labour Conference, at its 35th session (Geneva, 1952) adopted Convention No. 102 concerning Minimum Standards of Social Security.
5. As the planned European Code of Social Security was very similar in nature and in scope to ILO Convention No. 102, the Committee of Ministers decided that the said Convention could, among others, serve as a model for this Code.
6. However, in its Resolution (54) 13 of 11 September 1954, the Committee of Ministers, "desirous that as many Members as possible should be able to ratify the European Code of Social Security", then in preparation, agreed that the European Code would not achieve its aim unless it established a level of social security higher than the minimum standards embodied in ILO Convention No. 102.
7. In adopting this Resolution, the Committee of Ministers further instructed the Committee of Experts on Social Security "to examine the desirability of drafting a Protocol involving a higher level of social security to which those Members which are able to do so may adhere and which will constitute the European level of social security which all Members will strive to achieve".
8. The final versions of the draft Code and Protocol were adopted by the Committee of Ministers at its 129th meeting on 11 March 1964, and opened for signature on 16 April of the same year.
9. Both instruments entered into force on 17 March 1968, one year after the date of deposit of the third instrument of ratification, in accordance with Article 77, paragraph 2.
10. As of 27 May 1998 the state of ratification was as follows:

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(1) International Labour Organisation.

**EUROPEAN CODE OF SOCIAL SECURITY AND PROTOCOL**

COUNTRY	Parts									Date of ratification	Date of entry into force
	II	III	IV	V	VI	VII	VIII	IX	X		
SWEDEN	X	Y	Y	Y		Y	X	Y	Y	25.09.1965	17.03.1968
NORWAY	X	Y	X	Y	Y	Y		Y	Y	25.03.1966	17.03.1968
NETHERLANDS	Y	Y	Y	Y	Y	Y	Y	Y	Y	16.03.1967	17.03.1968
UNITED KINGDOM	X	X	X	X		X				12.01.1968	13.01.1969
LUXEMBOURG	Y	Y	Y	Y	Y	Y	Y	Y	Y	03.04.1968	04.04.1969
BELGIUM	Y	Y	Y	Y	Y	Y	Y	Y	Y	13.08.1969	14.08.1970
FED.REP.OF GERMANY	Y	Y	Y	Y	Y	Y	Y	Y	Y	27.01.1971	28.01.1972
IRELAND		X	X	X		X			X	16.02.1971	17.02.1972
DENMARK	X	X	X	X	X	X	X	X		16.02.1973	17.02.1974
ITALY				X	X	X	X			20.01.1977	21.01.1978
SWITZERLAND				X	X	X		X	X	16.09.1977	17.09.1978
TURKEY	X	X		X	X		X	X	X	07.03.1980	08.03.1981
GREECE	X	X		X	X		X	X	X	09.06.1981	10.06.1982
PORTUGAL	X	Y	Y	Y		Y	X	Y	Y	15.05.1984	16.05.1985
FRANCE	X		X	X	X	X	X	X		17.02.1986	18.02.1987
CYPRUS		X	X	X	X			X	X	15.04.1992	16.04.1993
SPAIN	X	X	X	X	X		X	X		08.03.1994	09.03.1995

X. has accepted the provisions of the Code

Y. has accepted the provisions of the Code as modified by the Protocol

Part II : Medical care

Part III : Sickness benefit

Part IV : Unemployment benefit

Part V : Old-age benefit

Part VI : Work accident and occupational disease benefit

Part VII : Family benefit

Part VIII : Maternity benefit

Part IX : Invalidity benefit

Partie X : Survivors' benefit

## II. Reasons for revision

11. At its 41st meeting (Strasbourg, 10-14 December 1973), the Committee of Experts on Social Security having studied:

- firstly, the question raised by the Consultative Assembly of index-linking long-term social security benefits to the cost of living and
- secondly, the annual reports on the application of the Code and Protocol by the Contracting Parties,

unanimously agreed that a number of provisions of the Code and Protocol had become at least partly incompatible with new trends in legislation and different social security practices followed in some member States.

12. The revision of the two instruments accordingly needed to be undertaken as soon as possible so that they could continue to promote social progress in Europe. The Committee of Experts asked the Committee of Ministers to authorise the inclusion in the Intergovernmental Work-Programme for 1976 of an activity on the "adaptation of standard-setting Council of Europe instruments to the development of social security concepts and structures".

13. The Committee of Ministers considered this proposal at its 232nd meeting (Strasbourg, 21-29 May 1974), and requested the Committee of Experts:

"to define more precisely the scope of their proposal, particularly as regards the matters requiring revision, the underlying reasons for it and the manner of revision".

14. Acting on this request, the Committee of Experts at its 43rd meeting (Vienna, 9-13 September 1974) defined the reasons which called for a rapid revision: it noted the discrepancy between certain provisions of the Code and Protocol and new ideas relating to social security. These new ideas were reflected both in the domestic legislation of member States and at international level, thanks to the new standard-setting Conventions and Recommendations in the social security field drawn up in the Council of Europe and in the ILO. The broader range of social benefits, the increasing personal scope of social security legislation, the higher levels of benefit and the gradual elimination of social discrimination based on sex, were examples of the changes that had come about in this field for which it would have been futile to try to find a proper "standard" in the Code or the Protocol.

15. The Committee agreed that the revision of the two instruments should have two major objectives: the improvement of standards and the introduction of greater flexibility.

### Improvement of standards

In this connection, the revision should relate to four main subjects, namely:

- i. extending the personal scope;
- ii. the improvement of the nature and level of benefits wherever desirable from the point of view of social equity;
- iii. greater flexibility in the conditions governing entitlement to, and receipt of, benefit (conditions of award, duration of the period of provision of benefit, suspension of benefits, overlapping of benefits, etc);
- iv. the adjustment of the fundamental social security concepts embodied in the two instruments (contingencies covered, beneficiaries, etc) to recent developments in social security conceptions and structures;

The introduction of greater flexibility

16. In this connection, the Committee called to mind the example of the new ILO standard-setting social security Conventions deriving from Convention No. 102 concerning Minimum Standards of Social Security (Conventions Nos. 121 concerning Benefits in the Case of Employment Injury, 128 concerning Invalidity, Old-age and Survivors' Benefits and 130 concerning Medical Care and Sickness Benefits), offering member States a variety of ways in which to fulfil their undertakings, having regard to their social security conception and machinery and to their level of development.

17. The introduction of greater flexibility means in particular that:

- with regard first of all to the conditions of ratification, Article 2, paragraph 1 permits States which have ratified the European Code of Social Security or Article 12, paragraphs 1 to 3 of the European Social Charter to ratify the (revised) Code while accepting only one of Parts II to X of the said (revised) Code; Article 3, paragraphs 3 and 4 stipulates that States accepting Parts of the (revised) Code are, under certain conditions, deemed to meet the obligations of other Parts of the (revised) Code relating to certain branches of social security which are not provided for in their own legislation. In addition, Article 7, paragraph 2 permits a State to satisfy the standard of the (revised) Code while departing from certain provisions of Parts II to X if the protection accorded by the national legislation is deemed equivalent. Lastly, within Parts II to X themselves, certain clauses provide for compensation measures (cf. the list in Article 7, paragraph 1 in fine), and others establish "bridges" between the said Parts to give States additional possibilities for ratification (for example, Article 18, paragraph 2, Article 24, paragraph 4, etc.);

- with regard to the actual formulation of standards, there are provisions that define the personal scope which is defined in such a way that States may adopt the standpoint of employees, the active population or residents depending on the case. In addition, the concepts are defined sufficiently flexibly to take full account of the rules of the different national legislations (for example, Article 10, paragraph 2 on cost-sharing and the concept of hardship);

- finally, with regard to the calculation of payments, States may now calculate the amount of periodic payments on the basis of two standard beneficiaries - either a beneficiary considered alone or a beneficiary with dependants - for all Parts accepted with the exception of Part VII (Family benefit) (see the table to Part XI - Periodical payments).

18. At its 243rd meeting (Strasbourg, 11 to 19 March 1975), the Committee of Ministers authorised the addition to the annual Programme of Intergovernmental Activities for 1976 of an activity entitled "Adjustment of the European Code of Social Security and the protocol thereto according to the development of social security in Europe".

19. It was also agreed to draw up one single instrument. Originally the existence of two separate instruments was justified: the European Code of Social Security was intended to define a minimum standard that social security in Europe should reach, whereas the Protocol contained the desirable standard. When it came to the revision of the Code and the Protocol, Convention No. 102 and the Code already defined the minimum standard. At the European level, the drawing up of two new instruments did not seem justified and furthermore, it would certainly have raised practical problems with regard to the supervision of their application.

20. On 27 April 1978, the Committee of Ministers adopted a Declaration on Human Rights which specifically recognised the rights of the individual in the social field in the following terms:

"II. DECIDE to give priority to the work undertaken in the Council of Europe of exploring the possibility of extending the lists of rights of the individual, notably rights in the social, economic and cultural fields, which should be protected by European conventions or any other appropriate means".

21. Succeeding the Committee of Experts on Social Security, the Steering Committee for Social Security (CDSS) followed up this Declaration by committing itself in particular to enlarging the personal scope of the Code and giving effect to these individual rights by developing protection mechanisms and procedures adhering closely to the standards defined in the European Code of Social Security.

22. On 28 June 1979, the Consultative Assembly adopted Recommendation 873 on the application and revision of the European Code of Social Security and its Protocol, recommending that the Committee of Ministers invite the Steering Committee for Social Security (CDSS):

- to prepare a single, comprehensive Document,
- to take account in its activities of current tendencies in European societies (such as the new forms of communal life outside the traditional family) and of the current developments in social security, implying the guarantee of basic protection for the entire population, irrespectively of the individual's occupational status,
- to go beyond the traditional sector-by-sector approach to the problem of defining standards, and to take a more comprehensive view, placing emphasis on the beneficiary's real needs, which supposed a certain flexibility in the provisions of the new instrument and recognition of the tendency towards harmonising the benefits paid,
- to provide for equality of treatment for men and women, and
- to promote preventive measures.

23. The revision of the Code and the Protocol was carried out by a Committee of Experts until 1982, after which it was continued by the CDSS until 1986.

24. Both Committees worked in close collaboration with the International Labour Office and enjoyed the benefit of its valuable technical assistance.

25. The draft (revised) Code, as adopted by the CDSS at its 28th meeting (December 1986), was submitted to the Committee of Ministers for examination and adoption at its 405th meeting (February 1987). The latter decided to ask the CDSS for advice on whether the Consultative Assembly should be consulted on the draft (revised) Code. At its 29th meeting (March 1987), the CDSS recommended consulting the Assembly on the draft (revised) Code. At its 409th meeting (June 1987), the Committee of Ministers agreed to forward the draft (revised) Code to the Consultative Assembly for its opinion.

26. On 4 October 1988, the Consultative Assembly adopted Opinion No.141 on the draft text prepared by the CDSS, in which it recommended that the Committee of Ministers:

- "a. adopt a (revised) European Code of Social Security on the basis of the draft drawn up by the Steering Committee for Social Security;
- b. incorporate in the (revised) Code the arrangements proposed in the draft, together with the following additions:

- i. the prohibition of sexual discrimination in branches of the social security covered by the (revised) Code with regard to the personal scope, benefits and financing of social security schemes;
- ii. the making of certain types of benefit available to people who cohabit with the protected person, but are not that person's spouse or child, with the possibility of opting out of this requirement;
- iii. the insertion in the instrument of clauses providing that, in the branches of old age and invalidity, account shall be taken, among the factors determining the entitlement to benefits, of activities of a family nature, such as bringing up children or taking care of elderly or handicapped dependants;
- iv. the insertion in the instrument of clauses under which, in the same branches, the amounts credited during marriage to one or the other of the spouses and serving as the basis for determining their rights to benefit shall be partially transferred to the credit of the other spouse, to the extent necessary to ensure an equal division between the spouses;
- v. a supervisory system whereby protected persons or groups of such persons notably in connection with professional organisations, may apply to a Council of Europe body for the enforcement of the guarantees given by member states with regard to the application of the code (Article 3, paragraph 2, Article 76, paragraph 2, and Article 77, paragraph 3, of the draft);
- vi. the creation, to that end, of an independent body within the Council of Europe for the purpose of considering reports submitted by states and receiving petitions from protected persons or groups of such persons;
- vii. the publication of the above-mentioned reports and petitions, along with the replies they receive;
- viii. periodic reviews of the (revised) Code as well as procedures for a future revision thereof;
- ix. the possibility for the European Communities to accede to the (revised) Code in accordance with the Arrangement of 16 June 1987;
- x. the inclusion of provisions allowing the accession of states not members of the Council of Europe."

27. On a proposal by the Steering Committee for Social Security, the Committee of Ministers decided to adopt the Assembly's proposals concerning:

- the prohibition of sexual discrimination;
- the consultation of professional organisations as part of the supervisory system;
- the creation of an independent body within the Council of Europe to consider the reports submitted by the Parties;
- accession by States which are not members of the Council of Europe.

28. The Committee of Ministers also decided to include in the revised Code provisions providing a procedure for amendments and the possible accession of the European Community.

29. The (revised) European Code of Social Security was adopted by the Ministers' Deputies at the 442nd meeting of the Committee of Ministers and opened for signature on 6 November 1990.

### **III. Structure of the (revised) Code**

30. The method adopted by the Committee of Experts for the adaptation of Council of Europe standard-setting instruments consisted of examining with care all legal instruments of the Council of Europe and ILO (Code, Conventions, Recommendations). The work of revision began after a questionnaire had been drawn up, replies to it analysed and the proposals for revised provisions based on the information yielded by the questionnaire had been examined.

31. In conformity with the decision referred to under point 18, the revision work resulted in the preparation of a single instrument with more demanding standards than those of the Code and Protocol.

32. The (revised) European Code of Social Security consists of 15 Parts.

33. Part I "General provisions" contains a series of definitions, but also clauses, dealing with the conditions for ratification of the instrument.

34. Parts II to X comprise the nine traditional branches of social security and the standards to be respected. These nine branches are:

- Part II: Medical care
- Part III: Sickness cash benefit
- Part IV: Unemployment benefit
- Part V: Old-age benefit
- Part VI: Work accident and occupational diseases benefit
- Part VII: Family benefit
- Part VIII: Maternity benefit
- Part IX: Invalidity benefit
- Part X: Survivors' benefit

These nine Parts are all constructed on the same plan, dealing in turn with:

- the contingency;
- the personal scope, determining who the protected persons are;
- the material scope, determining the kind of benefit;
- the conditions of entitlement to benefit;
- the amount of benefit;
- the duration of the period of provision of benefit, and, where appropriate, the waiting period.

35. Part XI, "Calculation of periodical payments", fixes the minimum level that periodical cash benefits must reach and the mode and basis of calculation of the various benefits.

36. Part XII, "Common provisions", defines the justifications for refusal, withdrawal or suspension of benefit; it determines the procedure for exercising the right of appeal.

37. Part XIII, "Miscellaneous provisions", lays down the control procedure concerning the application by the Parties of the (revised) Code.

38. Part XIV, "Amendments", contains the procedure to follow with a view to adopting an amendment to the provisions of the (revised) Code.

39. Part XV, "Final provisions", describes the procedure whereby States accept the obligations of the (revised) Code, extend, if they wish, the scope of their undertaking, or even denounce the (revised) Code.

40. Parts XI to XV contain provisions common to each of the Parts II to X.

41. The structure of the (revised) Code has been made less cumbersome. Addendum 2 to the Code, "Supplementary advantages", has disappeared since the flexibility introduced by the (revised) Code has made it unnecessary. Only Addendum 1, "Standard international industrial classification of all economic activities", remains.

### **Preamble to the (Revised) Code**

42. The revision of the Code and Protocol had two main objectives: to improve standards and to introduce greater flexibility. The improvement of standards was to relate more particularly to the increased personal scope, the nature and the level of benefits, as well as reflecting the adaptation of the fundamental concepts contained in the Code and Protocol to the changes in European social security systems, which occurred after the drafting of these instruments. The flexibility introduced into a certain number of provisions was intended to offer Contracting States a greater choice of means of complying with the requirements of the (revised) Code.

43. The preamble to the (revised) Code is of special importance in that respect, since it clarifies the (revised) Code's new angles of approach, defines the principles and lays down the objectives to be attained.

44. The harmonisation of the protection guaranteed by social security with common European standards and the resulting costs is the essential aim of the (revised) Code. This harmonisation is not to be understood here as unification of national legislation. It is more a question of defining the standards (personal scope, material scope, eligibility conditions, extent of benefits provided by the different social security branches, level of benefits in relation to reference income levels, period of payment of benefits, etc.) with which social security schemes must comply. Each State remains free to organise its social security system as it sees fit in order to meet the requirements.

45. The harmonisation of costs is the corollary of the harmonisation of standards. Once the national legislation of the different countries complies with the standards laid down by the (revised) Code, there will be an approximation of overall expenditure, i.e. a similar share of spending will be allocated to protection by social security guaranteed in all States. This idea of approximation of expenditure in no way affects the arrangements for financing social security schemes, which are still for States to determine.

46. In view of the changes in social security legislation which have occurred in most States since the drafting of the Code and Protocol, the (revised) Code was intended to be an instrument which was adjusted to the "present aspirations and capacity of European Society", taking into account the progress achieved in several Council of Europe member countries and reflected in a number of international instruments, such as ILO Conventions No. 121 concerning Benefits in the Case of Employment Injury, No. 128 concerning Invalidity, Old-age and Survivors' Benefits, No. 130 concerning Medical Care and Sickness Cash Benefit and No. 168 concerning Employment Promotion and protection against Unemployment.

47. The (revised) Code therefore advocated the extension of social security protection to the whole population, together with individual social rights.

48. Considering that equality of the sexes is one of the values which the Council of Europe has a duty to uphold and promote, the Committee of Ministers of the Council of Europe sent a message on this subject to the steering and ad hoc Committees on 20 January 1981, urging them to pay special attention to the impact of their activities on the promotion of equality between women and men. This trend towards equal treatment of men and women can also

be seen if the social security legislation and case-law in the different countries are considered. The special reference to the elimination of sex-based discrimination bears witness to the considerable effort made to adapt the Code and Protocol to the evolution of European society, especially to the radical change in the status of women. Equality of treatment of men and women is covered by a specific provision in paragraph 6 of Article 3, and most of the provisions which imply a difference of treatment between women and men have been removed during the revision of the Code and Protocol.

49. One of the objectives of the (revised) Code was to improve standards. The other one was to introduce into the new instrument represented by the (revised) Code a greater degree of flexibility in relation to the Code and Protocol. This notion of greater flexibility was introduced in order to take into account the situation prevailing in some States (see paragraph 17 above).

## **Part I – General provisions**

50. The following commentary on the body of the (revised) Code is intended to aid the understanding of its provisions and of the reasons for their inclusion. In a number of instances, the wording of the (revised) Code is considered to be self-explanatory and there is therefore no comment. In other instances, some concepts in the (revised) Code, and in particular "hardship", "appreciable changes" and "the length of the qualifying period enabling prevention of abuse" were unable to be given a precise evaluation. They are to be determined by national legislation, in conformity with the obligations resulting from international agreements.

### **Article 1**

#### *Definition of certain terms*

##### *Sub-paragraph (a): Definition of "Committee"*

51. This definition appears in the European Code of Social Security. However, the Committee's title was changed in pursuance of Resolution (76) 3 by the Committee of Ministers of the Council of Europe on 18 February 1976, so that it was no longer the Committee of Experts on Social Security but the Steering Committee for Social Security (CDSS). Following a new decision of the Committee of Ministers on this matter taken at their 486th meeting (18-20 January 1993), the title of this Steering Committee became the European Social Security Committee (CDSS). The Committee currently responsible for the Code is the Committee of Experts on Standard-setting Instruments in the Social Security Field.

##### *Sub-paragraph (b): Definition of "legislation"*

52. This definition does not appear in the European Code of Social Security, but the wording used is that of Article 1 (a) of ILO Conventions Nos. 121, 128 and 130.

53. The term legislation is understood in a very broad sense and embraces all legislation, whatever their national qualification may be, aimed at achieving the objectives set out in the revised Code:

- laws;
- regulations;
- any statutory rules;
- provisions introduced by way of collective agreements and made binding by the public authorities;

- in federal states: the laws and regulations of their constituent parts;
- laws and regulations of political and administratively autonomous regions.

*Sub-paragraph (c): Definition of "prescribed"*

54. This definition appears in the European Code of Social Security under Article 1 (d).

55. In accordance with the definition given in Article 1 (d) of the European Code of Social Security and in accordance with the interpretation given by the organs for the monitoring of the European Code of Social Security, "prescribed" does not mean only prescribed by law, but also covers other sources of law, such as established practice and case-law.

*Sub-paragraph (d): Definition of "resident"*

56. The European Code of Social Security defines the terms "residence" and "resident". The concept of a person "ordinarily resident" used in the (revised) Code is defined by national legislation.

*Sub-paragraph (e): Definition of "qualifying period"*

57. This definition appears in the European Code of Social Security, Article 1 (i) except for the clarifying phrase at the end: "for conferring entitlement to benefit".

58. The qualifying period is thus the period required for the purpose of conferring entitlement to benefit. This concept of qualifying period does not relate to the periods taken into account for the calculation of benefits.

*Sub-paragraph (f): Definition of "dependent"*

59. This definition does not appear in the European Code of Social Security, but is based on Articles 1 (e) of ILO Conventions Nos. 128 and 130, and Article 1 (d) of ILO Convention No. 121.

60. The state of dependency referred to is one of financial dependency and does not require to be proved: it is presumed and hence accepted de facto. The cases and the conditions for the presumption of dependency are for national legislation to determine.

*Sub-paragraph (g): Definition of "surviving spouse"*

61. The European Code of Social Security defines "widow"; discrimination between the sexes having, as far as possible, disappeared from the (revised) Code; a "surviving spouse" may be either a widow or a widower. Otherwise, sub-paragraph (g) defines a "surviving spouse" as the spouse who was dependent on the deceased person, in the sense of sub-paragraph (f).

*Sub-paragraph (h): Definition of "child"*

62. This definition is based on definitions contained in ILO Conventions No.121, Article 1 (e), No. 128, Article 1 (h) and No. 130, Article 1 (g).

63. The age specified in sub-paragraph (h) (i) is the same as in Article 1 (h) (i) of the Protocol to the European Code of Social Security.

64. Sub-paragraph (h) (ii) requires an age to be fixed that is higher than that laid down in sub-paragraph (h) (i) when the child is an apprentice, a student or has a chronic illness or physical or mental infirmity making him unfit to engage in any occupational activity. The national authorities alone are competent to specify the age.

65. The expression "under prescribed conditions" enables Parties to fix conditions in which the different hypotheses foreseen in sub-paragraph (h) (ii) of Article 1 of the (revised) Code are given. For example in the case of studies, the Parties may determine the number of hours required, the taking into consideration of evening classes, the integration of an apprenticeship envisaged by the study programme, etc.

## **Article 2**

### *Conditions of ratification*

66. This article's subject corresponds to that of Article 2, paragraph 1 of the European Code of Social Security.

67. In accordance with the "Model final clauses" for the approved Council of Europe Conventions agreed by the Committee of Ministers at its 315th meeting, in February 1980, and in conformity with the terminology established by the Vienna Convention on the Law of Treaties (1969), the term "Party" means a State that has deposited an instrument of ratification, acceptance, approval or accession and in respect of which the (revised) Code has entered into force.

### *Paragraph 1*

68. This paragraph offers ratification facilities to States which:

- are already bound by paragraphs 1 to 3 of Article 12 of the European Social Charter, which stipulate:

#### **"Article 12 – The right to social security**

With a view to ensuring the effective exercise of the right to social security the Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of the ILO Convention (No. 102) concerning Minimum Standards of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;"

- or have accepted in full or in part the obligations of the European Code of Social Security.

The acceptance of just one of Parts II to X of the (revised) Code suffices for these States to ratify the revised Code.

*Paragraph 2*

69. States which are bound neither by paragraphs 1, 2 and 3 of Article 12 of the European Social Charter nor by the European Code of Social Security must accept at least three of Parts II to X.

70. However, the less stringent obligations of paragraph 1 are not unfair as compared with those of paragraph 2 because States which can avail themselves of paragraph 1 are already bound by the standard-setting instruments with which this text is concerned, and for their ratification, have had to accept obligations at least equivalent to, if not higher than, those of paragraph 2.

**Article 3**

*Extent of commitment*

71. The expression "Contracting State" has a different meaning from "Party" since it is to be understood as a State which has agreed to be bound by the (revised) Code, but for which it has not yet come into force (see comment concerning Article 2).

*Paragraph 1*

72. This Paragraph is based on Article 3 of the European Code of Social Security, and Article 2 of ILO Conventions Nos. 102 and 128.

73. States which intend to ratify the (revised) Code shall specify the Part or Parts of this Code of which they accept the obligations at the time of depositing the instruments of ratification, acceptance, approval or accession. (See also the comment under Article 84, paragraph 1).

*Paragraph 2*

74. This paragraph imposes an obligation on Parties to secure benefits. The Party must adopt and implement all necessary measures to comply with this undertaking, in particular if the social security body, the Parties to a collective agreement, the constituent parts of a federal State, the autonomous regions, or -where they are legally responsible for the payment of sickness benefit or work accident benefit - the employers are no longer able to provide such benefits.

75. As regards the social security situation of foreigners and migrant workers, particularly equality of treatment with nationals and the preservation of rights required and rights in the course of acquisition, the (revised) Code, contrary to Article 73 of the European Code of Social Security, contains no specific provisions. This means that the standards of the (revised) Code should be respected with regard to all persons covered regardless of their nationality. This does not mean, however, that there has to be equality between nationals and foreigners because the (revised) Code fixes a "floor" standard which Parties undertake to respect. For example, Article 61, paragraph 1 of the (revised) Code states that "Where entitlement to invalidity benefit is conditional under a Party's legislation, upon completion of a qualifying period, that period may not be longer than five years". A Party may thus stipulate a qualifying period of one year for its nationals and five years for foreigners, while still respecting the standard of the (revised) Code.

*Paragraph 3*

76. Contracting States which accept the Parts relating to medical care (II), sickness cash benefit (III), invalidity benefit (IX) and survivors' benefit (X) of the (revised) Code and also apply them to victims of work accidents or occupational diseases and to their survivors are deemed to comply with the obligations of the Part relating to work accident and occupational

diseases benefit (VI) in so far as legislation does not make entitlement to benefit under the above-mentioned parts subject to qualifying periods. This flexibility clause should facilitate acceptance of the commitments embodied in Part VI by States which have abolished distinctions of any kind in their compensation for accidents and diseases, whether or not of occupational origin.

*Paragraph 4*

77. Contracting States which accepted the Parts relating to old-age benefit (V), family benefit (VII) and invalidity benefit (IX) of the (revised) Code shall be deemed to comply with the obligations of Part X (Survivor's benefit) if, where Parts V (Old-age benefit) and IX (Invalidity benefit) are concerned, the entire economically active population is protected and if, where Part VII (Family benefit) is concerned, all children of economically active persons are protected. This flexibility clause should facilitate acceptance of the commitment embodied in Part X.

*Paragraph 5*

78. This paragraph obliges Contracting States which intend to take advantage of the alternative provisions in paragraphs 3 and 4 to specify this in their instrument of ratification, acceptance, approval or accession.

*Paragraph 6*

79. This paragraph gives substance to the passage in the preamble relating to equality between women and men. It obliges the Parties to endeavour to ensure implementation of the principle of equal treatment between women and men. It is thus a programmatic provision only. It is for the supervisory organs, when monitoring the application of the (revised) Code, to examine what efforts have been made to this end.

**Article 4**

*Subsequent notification procedure*

80. This article is based on Article 4 of the European Code of Social Security and makes provision for complementary notification. The procedure it lays down enables Parties which have not accepted all of Parts II to X to notify the Secretary General of the Council of Europe subsequently that they accept the obligations deriving from one or more Parts not specified in their initial instrument of ratification, acceptance, approval or accession; these obligations become effective on the date of notification.

**Article 5**

*Succession in time of the European Code of Social Security and its Protocol and the (revised) Code*

81. This article does not apply to Parties which have not ratified the European Code of Social Security.

82. This article is based on Article 29 of ILO Convention No. 121, Article 45 of ILO Convention No. 128 and Article 36 of ILO Convention No. 130, which also contain provisions relating to succession in time of international conventions.

83. It shows that while the European Code of Social Security and its Protocol, and the (revised) Code are closely linked, they are nonetheless three separate legal instruments.

84. For Parties having ratified the European Code of Social Security, there are two cases in point:

- A Party bound by the European Code of Social Security ratifies one or more Parts of the (revised) Code:

– the corresponding Part(s) of the (revised) Code replace the Parts of the European Code of Social Security which cease to be applicable; however, the Parts of the Code which the (revised) Code replaces nevertheless continue to be taken into consideration in order to avoid the condition of the number of Parts which have to be accepted for ratification of the Code, in accordance with its Article 2, no longer being fulfilled.

– the other Parts of the European Code of Social Security remain in force.

- A Party accepts one or more Parts of the (revised) Code not having previously accepted the corresponding Part(s) of the European Code of Social Security or, as the case may be, of its Protocol; this Party will be regarded as accepting the corresponding Parts of the Code and Protocol regarding Article 2 of the Code.

85. When the supervisory bodies investigate whether such a Party is complying with the standards laid down, they will do so in conformity with the standards of the (revised) Code and not of the Code and Protocol.

## **Article 6**

### *Account taken of non-compulsory insurance schemes*

86. This article is based on Article 6 of the European Code of Social Security.

87. Under this article, a Party may take the protection afforded by optional insurance schemes into account. At the same time, if a Party is to avail itself of them, those schemes must comply with certain criteria laid down in Article 6. They must be either supervised by the public authorities or administered by employers and workers in accordance with standards prescribed by national legislation.

88. This article offers the Parties two possibilities:

- if the non-compulsory scheme is the only one and it complies with sub-paragraphs (a) and (b) of this article, it will be taken into account as a scheme replacing a compulsory scheme if it complies with the standards embodied in the (revised) Code;

- if the non-compulsory scheme is supplementary to a compulsory one, it will be taken into account, together with the other forms of compulsory protection, as a complementary scheme making it possible to comply with the corresponding provisions of the (revised) Code.

## **Article 7**

### *Derogations*

89. This article is new and has been introduced in the interests of the flexibility sought. The latitude it allows does not lower the level of standards since the derogations imply either compensations or the existence of equivalent provisions.

90. Paragraph 2 of Article 2 of the European Code of Social Security facilitates ratification. Where a Contracting Party does not meet the conditions for ratification laid down in paragraph 1 of Article 2 it is to be regarded as fulfilling the conditions for ratification if it:

- applies at least three of Parts II to X, including at least one of Parts IV (Unemployment benefit), V (Old-age benefit) VI (Work accident and occupational diseases benefit), IX (Invalidity benefit) and X (Survivors' benefit),
- shows that the standards of some of its branches are higher than those of the Code with regard to personal scope and/or level of benefits;
- awards the supplementary services or advantages listed in Addendum 2.

However, these facilities enabling ratification have not been included in the (revised) Code. Indeed, on the one hand they have proved too complex a mechanism and, on the other, no contracting Party has made use of them so far.

#### *Paragraph 1*

91. This paragraph specifies the derogations that require compensatory measures. They are derogations from:

- the personal scope of medical care (paragraphs 1 to 3 of Article 9),
- the provisions concerning the waiting period prescribed for the payment of sickness cash benefit (paragraph 1 of Article 17),
- the provisions concerning the prescribed age of entitlement to old-age benefit (paragraph 1 of Article 27),
- the period of contributions, occupational activity or residence required for entitlement to old-age benefits (paragraph 2 of Article 29),
- the personal scope of maternity benefits (paragraphs 1 to 3 of Article 52),
- the provisions concerning the award of benefits to a surviving spouse (Part X).

92. These derogations may be permanent and must be compensated for under national legislation, according to the provisions of the (revised) Code in paragraph 4 of Article 9, paragraph 2 of Article 17, paragraphs 2 and 3 of Article 27, paragraph 3 of Article 29 and paragraph 4 of Article 52.

93. Only a derogation from Article 70 (Survivors' benefit) is temporary and calls for no compensation. This derogation ought to disappear. The supervisory authorities provided for in Article 81 shall ensure that the Parties in question are acting in accordance with the obligations arising out of paragraph 2 of Article 70.

94. Recourse to such derogations must be notified in a declaration addressed to the Secretary General.

#### *Paragraph 2*

95. This paragraph contains the equivalence provisions stipulating that certain provisions of national legislation, although different from those of the (revised) Code, may be regarded as equivalent to them.

96. The use of the expression "at least equivalent protection" should permit as many ratifications as possible without marring the general level of standards to be respected.

97. Only the procedures whereby proof must be furnished for the acceptance of derogations are covered in the (revised) Code: its content is not specified. The verification ought to take place in conjunction with the examination of the report on the application of the (revised) Code.

98. Recourse to such equivalence provisions must be notified in a declaration addressed to the Secretary General.

*Paragraph 3*

99. This paragraph is based on Article 39 of ILO Convention No. 128. It was introduced to take account of the existence in some countries of special schemes for civil servants, with specific management and funding systems.

100. A State shall not be able to take advantage of this provision unless its civil servants are covered by special schemes under which they receive total benefits at least equivalent to those provided for by the (revised) Code. The State in question should, when signing or depositing its instrument of ratification, acceptance, approval or accession, make an appropriate declaration. This exclusion may relate to one or more, or even all Parts of the (revised) Code.

101. Since in such cases civil servants are excluded from the application of one or more Parts of this (revised) Code, they are to be left out of account when the percentages are calculated for each Part.

**Part II – Medical care**

**Article 8**

*Definition of the contingency*

102. This provision reproduces Article 7 (a) of ILO Convention No. 130.

103. The contingency covered is the need for medical care by reason of a morbid state whether this results from an accident or disease.

104. The contingency does not extend to pregnancy, confinement or their sequelae, these being dealt with in Part VIII on maternity benefits.

105. The types of medical care of a curative nature that must be provided, and which represent minimum standards, are enumerated in Article 10.

106. The types of medical care of a preventive nature to be given to the persons protected are for national legislations to prescribe.

**Article 9**

*Personal scope*

*Paragraph 1*

107. Article 9 of the European Code of Social Security stipulates that States intending to assume the obligations deriving from this Part must protect either the prescribed categories of

employees constituting no less than 50% of all employees or prescribed categories of the economically active population constituting at least 20% of all residents, or at least 50% of all residents. The percentages indicated in the Protocol are, for the categories listed, 80%, 30% or 65% respectively. The (revised) Code provides for the protection either of all employees, or all of the economically active population, or all residents.

108. Three alternatives are offered: two concern insurance systems based on the protection of occupational categories and members of their families (sub-paragraphs (a) and (b)) and the third universal schemes (sub-paragraph (c)).

*Sub-paragraph (a)*

109. This sub-paragraph is based on Article 10 (a) of ILO Convention No.130.

110. The term "employees" covers all employed persons, including part-time workers, civil servants, etc, except for the latter in cases where Article 7, paragraph 3 applies.

111. Apprentices are protected in the same way as employees. The concept of "apprentice" is determined by national legislation.

112. The unemployed are not to be taken into consideration for the purposes of complying with Article 9, paragraph 1 (a). Those receiving benefit are dealt with separately in paragraph 3 of Article 9 and are therefore excluded from this sub-paragraph.

*Sub-paragraph (b)*

113. This sub-paragraph is based on Article 10 (b) of ILO Convention No. 130.

114. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 applies) and the self-employed.

115. The unemployed are not to be taken into consideration for the purposes of complying with Article 9, paragraph 1 (b). Those receiving benefit are dealt with separately in paragraph 3 of Article 9 and are therefore excluded from this sub-paragraph.

116. Parties which avail themselves of sub-paragraph (a) or (b) of paragraph 1 of Article 9 have no obligation regarding the protection of unemployed people not receiving benefit.

*Sub-Paragraph (c)*

117. This sub-paragraph is based on Article 9 (c) of the European Code of Social Security and takes into account the objective defined in paragraph 2 (e) of ILO Recommendation No. 134.

*Paragraph 2*

118. This paragraph allows the Parties to derogate, to a certain extent, from the provisions of paragraph 1 of this article on the personal scope insofar as it offers them the possibility of covering only 95% of employees, or 90% of the economically active population or 90% of residents. This is a flexibility clause designed to facilitate the ratification of the (revised) Code.

*Paragraph 3*

119. Sub-paragraphs (a) and (c) of paragraph 3 are based on Article 12 of ILO Convention No. 130. Sub-paragraph (b) of paragraph 3 is new.

120. This paragraph extends the personal scope of Part II (Medical care) to people receiving or applying for certain benefits (invalidity, old-age, survivor's, or permanent disablement to a prescribed degree, or survivor's in the case of work accident/occupational disease) and to unemployment benefits beneficiaries, while leaving it to national legislation to define the entitlement conditions.

*Paragraph 4*

121. This clause too is intended to provide additional flexibility, but a replacement procedure is arranged, in contrast with paragraph 2. Parties may in fact derogate from the obligations relating to the personal scope in the preceding paragraphs if, furthermore, they guarantee a certain compensation in accordance with paragraph 1 of Article 7.

122. This compensation consists of granting long-term care to all residents. The scope of protection for other categories of care may then be more restricted than normally required by paragraphs 1 to 3 of this article, provided that at least 80% of all employed persons, or at least 75% of all the economically active population, or at least 70% of all residents are protected.

**Article 10**

*Material scope*

*Paragraph 1*

123. This paragraph is based on Article 10, paragraph 1 of ILO Convention No. 121 and Article 13 of ILO Convention No. 130.

124. This paragraph shows a list of medical benefits that must be covered by the legislation of a Party that accepts the obligations laid down in Part II (Medical care). Nonetheless, the paragraph leaves the Party freedom of policy with regard to the implementation of these standards, as the paragraph confines itself to indicating the nature of the medical care that must be covered, not to fixing a precise level of such benefits. However, the level of the benefits should be in accordance with what is generally recognised and accepted as good medical practice.

125. This means, for instance, that newly developing specialisms or specialist care that is not considered to be usual within the profession do not have to be included in the legislation of a Party. Furthermore, this article leaves the Party the possibility to restrict the provision of the treatment (e.g. by way of waiting list), or to limit the number of treatments subject to compliance with the provisions of paragraph 3 of this article.

126. With regard to the provision of necessary pharmaceutical supplies, the word "necessary" indicates that not all medicines that are legally for sale in the territory of a Party must be provided under the national legislation. If there is a choice between a relatively cheap and a relatively expensive medicine, and both have an equivalent pharmaceutical value for a certain treatment, a Party is allowed to provide only the cheaper one.

*Paragraph 2*

127. This paragraph is based on Article 17 of ILO Convention No. 130.

128. The European Code of Social Security permits payment by the beneficiary or the breadwinner of a share of the cost of the medical treatment of morbid conditions.

129. The Protocol lays down the upper limit of the share payable; it must not exceed 25% of the costs except in the case of routine dental care, for which it may be fixed at a maximum of 33 1/3%.

130. No precise figures for the degree of cost-sharing appear in the (revised) Code since the sharing of cost may vary for example according to whether it is calculated as a flat rate or as a proportion of the cost of the products and services. Cost-sharing may be higher than mentioned in the Protocol.

131. The concept of cost-sharing implies that part of the cost is borne by the insured person, which rules out the full burden of medical costs being borne by the persons protected. This paragraph is designed to limit the beneficiaries' share: the financial burden must not impose hardship and so risk detracting from the effectiveness of medical and social protection. The risk is especially high for persons with chronic diseases or destitute persons.

132. In overall terms, the risk of hardship can therefore be averted, for example, by limiting the insured person's share to an overall annual amount or a restricted number of medical benefits, by exempting certain groups, such as those receiving welfare assistance, from paying any share, or by drawing up a list of chronic and especially costly diseases whose treatment will be fully covered.

### *Paragraph 3*

133. This paragraph reflects the main objectives assigned to the Parties who have accepted Part II (Medical care) of the (revised) Code and testifies to the importance of prevention and rehabilitation in this instrument.

134. Medical care should indeed be aimed at the simultaneous:

- prevention of the occurrence of any contingency covered by Article 8 of the (revised) Code;
- prevention of the worsening of the condition or situation of the person concerned, resulting from the occurrence of the contingency;
- improvement of the patient's state of health;
- reduction of the social and financial consequences of the occurrence of the contingency, in particular by implementing measures such as medical rehabilitation.

## **Article 11**

### *Condition of entitlement*

135. This article appears in the (revised) Code in a slightly different wording from that in the European Code of Social Security. It clarifies the concept of a qualifying period, which is of particular significance in occupation-based schemes, i.e. only concerning persons who exercise a gainful activity.

136. This article accepts that a qualifying period may be required before medical care becomes available, but restricts its length to one that is necessary to prevent abuse. The length of time necessary to prevent abuse is determined by national legislation.

## **Article 12**

### *Duration of the period of provision of benefit*

#### *Paragraph 1*

137. This paragraph is based on Article 16, Paragraph 1, of ILO Convention No. 130.

138. Except in the cases enumerated in Article 74, medical care must be provided throughout the contingency covered.

#### *Paragraph 2*

139. This paragraph is based on Article 16, paragraph 2 of ILO Convention No. 130.

140. It provides that Parties shall maintain entitlement for protected persons who have ceased to belong to a category of protected persons. The conditions in which this right is maintained (including the period for which the right is maintained) are determined by national legislation.

## **Part III – Sickness cash benefit**

### **Article 13**

#### *Definition of the contingency*

141. By virtue of Article 14 of the European Code of Social Security, the contingency covered is any incapacity for work entailing suspension of earnings that results from a morbid condition. The (revised) Code has abandoned this notion of "morbid condition" which was defined by the ILO as follows "a condition can be considered as morbid so long as it requires medical care" (Report Va (2) 1952, p.217). The (revised) Code limits itself to stating that the incapacity for work must result from an illness or accident. It is understood that the illness or accident in question in this Part is not work-related.

### **Article 14**

#### *Personal scope*

#### *Paragraph 1*

142. Article 15 of the European Code of Social Security stipulates that States intending to assume the obligations deriving from this Part must protect either prescribed categories of employees constituting no less than 50% of all employees or prescribed categories of the economically active population constituting no less than 20% of all residents, or all residents whose means during the contingency do not exceed limits prescribed by national legislation. The percentages which appear in the Protocol for the categories listed are 80% and 30% respectively. The (revised) Code provides for the protection of all employees including apprentices, or of prescribed categories of the economically active population constituting at least 80% of the total economically active population.

#### *Sub-paragraph (a)*

143. This sub-paragraph is based on Article 19 (a) of ILO Convention No. 130.

144. The term "employees" covers all employees, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

145. "Apprentices" are protected in the same way as employees. The concept of apprentice may be defined by national legislation.

*Sub-paragraph (b)*

146. This sub-paragraph is based on Article 19 (b) of ILO Convention No. 130.

147. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

148. Parties which avail themselves of sub-paragraph (a) or (b) of paragraph 1 of Article 14 have no obligation regarding the protection of unemployed people.

*Paragraph 2*

149. This paragraph allows Parties to cover only 90% of all employees, thus derogating from the provisions regarding personal scope specified in paragraph 1, sub-paragraph (a) of Article 14. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

**Article 15**

*Nature and amount of benefit*

150. Sickness cash benefit has to be calculated in accordance with the provisions of either Article 71 or of Article 72, whether the amount is fixed or variable during the contingency. Where the amount varies in the course of the contingency, the Party concerned meets the standard if the average amount of sickness cash benefit complies with the provisions of either Article 71 or Article 72.

**Article 16**

*Condition of entitlement*

151. This article appears in a slightly different wording in the European Code of Social Security. The wording adopted in the (revised) Code clarifies the concept of a qualifying period, which is of particular significance in occupation-based schemes, i.e. concerning only people exercising a gainful activity.

152. This article accepts that a qualifying period may be required before sickness cash benefit becomes available, but restricts its length to that necessary to prevent abuses. The length of the qualifying period necessary to prevent abuses is determined by national legislation.

**Article 17**

*Waiting period and duration of the period of provision of benefit*

*Paragraph 1*

153. This paragraph is based on Article 26, paragraph 3 of ILO Convention No. 130.

154. The waiting period is a period during which benefits are not due. This period runs from the first day of suspension of earnings and may not be longer than three days.

*Paragraph 2*

155. Where a Party has availed itself of the terms of Article 14, paragraph 1 (b), the waiting period may be longer than three days in the case of self-employed workers. In this case the (revised) Code leaves national legislation entirely free to fix the waiting period.

*Paragraph 3*

156. Except in the cases enumerated in Article 74, sickness cash benefit is paid in principle throughout the duration of the contingency. There is one qualification, however, to this principle; it is permissible to limit the duration of payment of sickness cash benefit (this arrangement is based on Article 18 of the European Code of Social Security). Where, after the period of 52 or 78 weeks, sickness cash benefit is still paid under the legislation of the Party concerned, it does not necessarily have to meet the standards prescribed in Part III (Sickness cash benefit).

157. If old-age, invalidity or rehabilitation benefits are paid in cash during the period of payment of sickness cash benefit, these benefits are a substitute for sickness cash benefit even during the limited period of 52 or 78 weeks laid down in this paragraph. Such substitute benefits may be less than the sickness cash benefits. In extreme cases, the amount of the substitute benefits may even be purely theoretical. For example, if the substitute benefits are invalidity benefits and they are calculated in accordance with Article 73, they may be nil.

**Article 18**

*Grant for funeral expenses*

*Paragraph 1*

158. This paragraph is based on Article 27 of ILO Convention No. 130.

159. A grant for funeral expenses is an allowance paid as a lump sum in the event of the insured person's death to certain categories of persons specified in national legislation. The (revised) Code does not set any standards as to the amount of this grant.

160. This grant is paid when the person concerned was receiving, or entitled to receive, sickness cash benefit; this latter expression means that the insured person was entitled to sickness benefit, fulfilled the requisite condition to receive it, but had not yet received it.

*Paragraph 2*

161. A substitution arrangement is provided for in this paragraph. When a Party has accepted the obligations laid down in Part X (Survivors' benefit), it is deemed to have complied with Article 18, paragraph 1.

**Part IV – Unemployment benefit**

**Article 19**

*Definition of contingencies*

*Paragraph 1*

162. The definition of the contingency covered has been amended somewhat since ILO Convention No. 44, which defines it as a "loss of earnings", whereas the European Code of Social Security and its Protocol refer to "suspension of earnings". In these three instruments,

the reference to the previous earnings of the person concerned is a constant feature of the definition, which means that the intention of these instruments is that in order for the contingency to come about, the person must have already worked. The (revised) Code distinguishes between the case of total unemployment, defined as "absence of earnings", and that of unemployment other than total, defined as "loss of earnings". The reference to "absence of earnings" extends the protection against unemployment afforded by the (revised) Code to certain categories of people, such as young people looking for a first job, divorced people and surviving spouses who have never been employed and who are looking for a job, etc. A similar approach is adopted in the most recent instruments adopted by the International Labour Conference concerning protection against unemployment: the Employment Promotion and Protection against Unemployment Convention (No. 168) and Recommendation (No. 176) of 1988.

163. The expression "under prescribed conditions" in the introduction to the paragraph is intended to allow each country's legislation great flexibility in defining the contingency.

164. Sub-paragraphs (a) and (b) refer to two distinct contingencies, i.e. total unemployment and unemployment other than total, both of which must be covered by national legislation.

*Sub-paragraph (a): total unemployment*

165. The replacement of the term "suspension of earnings" by "absence of earnings" in the (revised) Code provides protection for persons who have never belonged, or have ceased to belong, to categories of protected persons within the meaning of paragraph 1 of Article 20, and reflects the real extension of the personal scope of unemployment benefit.

*Sub-paragraph (b): unemployment other than total*

166. This sub-paragraph explains what is meant by "unemployment other than total". This term was preferred to "partial unemployment" since it covers cases of unemployment which are similar to total unemployment, but which cannot be treated in the same way because the work relationship between the employer and the person concerned remains in existence. The sub-paragraph thus provides, for example, for cases where, although the employment contract between the employer and the person concerned still exists, the latter suffers a loss of wages due, for example, to a reduction in working hours below the legal or normal level, to a temporary suspension of activity or a temporary closure of the establishment, or else a loss of earnings because of inability to find suitable full-time employment.

167. Sub-paragraphs (b) (i) and (b) (ii) define the two forms of unemployment other than total that may be covered and that constitute alternatives. The Parties are therefore free to make provision for one or other situation, or both.

*Sub-paragraph (b) (i)*

168. Having regard to the expression "under prescribed conditions" in the introductory sentence of paragraph 1, this sub-paragraph applies to cases of unemployment other than total, notably to those which are due to economic problems or bad weather conditions, whether these affect the whole firm or only part of it.

169. The expression "normal or legal working time" refers

- either to actual working hours where no legal rule exists;
- or to maximum working hours whether contractual or legal;
- or to the customary number of hours where this does not exceed the contractual or legal number.

Overtime is excluded in all three cases.

*Sub-paragraph (b) (ii)*

170. This sub-paragraph applies to the situation of a person who is fully unemployed who had previously been employed full-time and has accepted a part-time job while seeking a full-time job; it does not apply to the situation of a worker who is normally employed on a part-time basis and who is seeking full-time employment. In the latter case there is no question of loss of earnings.

*Paragraph 2*

171. The concept of "suitable employment" is fundamental, as its interpretation determines the extent to which a recipient of unemployment benefit is required to accept the jobs offered to him. Article 21 of Convention No. 168 defines the concept of "suitable employment" in a very similar way to Article 19 of the (revised) Code.

172. Most national legislation on unemployment relief refers to four main criteria and one supplementary criterion, namely: physical fitness, vocational skills, previous remuneration, distance between place of work and home and, lastly, family responsibilities. The duration of unemployment and the state of the labour market may influence the application of those criteria.

173. The concept of "suitable employment" as defined in paragraph 2 was adopted because it has the merit of being very flexible, and offers national legislation a wide choice of criteria. Despite this flexibility, the criteria enumerated in this provision shall in every case be taken into consideration by the Parties for the purpose of judging whether a job is suitable, according to the prescribed conditions of their own legislation and to the requirements of each separate case; it being understood that the Parties may take account of other criteria.

**Article 20**

*Personal scope*

*Paragraph 1*

174. Article 21 of the European Code of Social Security stipulates that States intending to assume the obligations deriving from this Part must protect either prescribed categories of employees, constituting not less than 50 % of all employees, or residents whose means during the contingency do not exceed a prescribed amount. The Protocol fixes the proportion of employees to be protected at 55% at least of all employees. The (revised) Code provides for the protection either of all employees or of prescribed categories of the economically active population constituting in all no less than 70 % of the total economically active population. The reference to residents has been dropped here in Part IV (Unemployment benefit).

*Sub-paragraph (a)*

175. The term "employees" covers all employed persons, including part-time workers and civil servants, except for the latter in cases where Article 20, paragraph 2, sub-paragraph (b) is applicable.

176. Apprentices are protected in the same way as employees. The concept of "apprentice" is determined by national legislation.

*Sub-paragraph (b)*

177. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 20, paragraph 2, sub-paragraph (b) is applicable) and self-employed persons.

*Paragraph 2*

*Sub-paragraph (a)*

178. This sub-paragraph allows Parties to derogate from the provisions of sub-paragraph (a) of paragraph 1 of this article concerning personal scope and, to a certain extent, exclude categories of employees, including apprentices, from protection. If recourse is had to this sub-paragraph, at least 85% of all employees should be protected. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code; all the more so as the percentage of people who may be excluded is higher here than in any other part of the (revised) Code.

*Sub-paragraph (b)*

179. Parties which offer their civil servants guarantees, as defined in national legislation, of security of employment may exclude them from unemployment benefit. Persons thus excluded must not be counted for the purpose of applying sub-paragraphs (a) and (b) of paragraph 1.

*Paragraph 3*

180. This paragraph contains a list of eight categories of persons who should receive special attention from the social security system if they have never been protected before or have ceased to belong to a group of protected persons. A Party must cover at least two of the categories mentioned, which may include both persons who have never belonged, and persons who have ceased to belong, to the groups of persons protected.

**Article 21**

*Nature and amount of benefit*

*Paragraph 1*

181. In the event of total unemployment, the benefit must consist of periodical payments. Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standards, whatever the categories of persons protected under Article 20.

*Paragraph 2*

182. This paragraph stipulates that in cases of unemployment other than total, the periodical payments must be calculated equitably, having regard to the loss of earnings suffered. The amount of the periodical payments thus calculated, together with the beneficiary's earnings, must be at least equal to the benefit paid in the case of total unemployment.

*Paragraph 3*

183. This paragraph specifies the situations in which it is permissible to take the beneficiary's means into account in calculating benefit in accordance with Article 73:

- where unemployment benefit is awarded without any qualifying period to persons who have never belonged, or have ceased to belong, to protected groups (Article 20, paragraph 3);
- where unemployment benefit continues to be paid after the minimum 39-week period prescribed in paragraph 1 of Article 24.

## **Article 22**

### *Condition of entitlement*

#### *Paragraph 1*

184. This article appears in a slightly different wording in the European Code of Social Security. The wording adopted in the (revised) Code clarifies the concept of a qualifying period, which is of particular significance in occupation-based schemes, i.e. concerning only persons exercising a gainful activity.

185. This paragraph accepts that a qualifying period may be required before unemployment benefit becomes available, but restricts its length to that necessary to prevent abuses. The length of time necessary to prevent abuses is determined by national legislation.

#### *Paragraphs 2 and 3*

186. Paragraphs 2 and 3 allow the Parties to adapt the qualifying conditions to the special situations of seasonal workers and persons who have never belonged, or have ceased to belong, to the groups of persons protected.

## **Article 23**

### *Waiting period*

#### *Paragraph 1*

187. This paragraph permits the Parties to provide for a waiting period, the length of which may not exceed certain limits.

These limits are:

- either the first three days in each case of unemployment, provided that in the case where an unemployed person finds employment for a short period, after which they are again unemployed, only one waiting period is applied. In fact, because of the limited period of employment (whose duration is specified in national legislation), the two periods of unemployment preceding and following the period of temporary employment are considered as one single period.
- or the first six days of unemployment in a period of twelve months.

#### *Paragraph 2*

188. The Parties may adapt the length of the waiting period to the conditions of employment specific to seasonal workers.

*Paragraph 3*

189. Where benefit is awarded without the completion of a qualifying period to persons who have never belonged, or who have ceased to belong, to the groups of persons protected (cf. paragraph 3 of Article 20), the Parties may extend the waiting period to a maximum of 26 weeks. This extended waiting period in fact functions as a qualifying period for this category of persons.

**Article 24**

*Duration of payment of benefit*

*Paragraph 1*

190. Except in the cases enumerated in Article 74, unemployment benefit is paid in principle throughout the contingency or until the payment of benefit in cash in respect of old age, invalidity or rehabilitation.

191. Attention is drawn to two special features:

- in the case of total unemployment, a period limited to 39 weeks may be prescribed during which benefit calculated in accordance with Article 71 or Article 72 must be paid; if the period for which unemployment benefit is paid exceeds 39 weeks, the benefit paid may be calculated in accordance with Article 73;
- in the case of unemployment other than total, the duration of the payment of benefit may be limited, in accordance with the provisions of national legislation.

192. If old-age, invalidity or rehabilitation benefits in cash are paid, these benefits substitute for unemployment benefit. The amount of such substitute benefits may be less than the unemployment benefit. In extreme cases, the amount of the substitute allowances may even be purely theoretical (see commentary on paragraph 3 of Article 17 above).

*Paragraph 2*

193. This paragraph concerns social security systems under which the period of payment of unemployment benefit varies according to the length of the qualifying periods completed. It is intended to adapt the standard laid down in paragraph 1 regarding the period of payment of benefit where this is scaled to the length of the qualifying period. The adaptation entails establishing an average period of payment of benefit weighted according to the frequency of the cases of unemployment actually recorded.

Example

Qualifying period	Duration of payment	Number of cases	Frequency
12 months	6 months	200	20%
24 months	12 months	500	50%
36 months	24 months	300	30%

Total 1000

Weighted average:  $(0.2 \times 6) + (0.5 \times 12) + (0.3 \times 24) = 14.4$  months

*Paragraph 3*

194. This paragraph requires Parties to extend, under certain conditions, the payments of unemployment benefit beyond 39 weeks in the case of unemployed persons approaching the pensionable age. This extension runs up to the pensionable age prescribed for the application of Article 26, paragraph 2.

*Paragraph 4*

195. This paragraph enables Parties which have accepted Parts V (Old-age benefit) or IX (Invalidity benefit) to replace the extended payment of unemployment benefit, provided for in paragraph 3, by the payment of old-age or invalidity benefit where the protected persons concerned are close to the age of entitlement to an old-age pension.

*Paragraph 5*

196. This paragraph offers Parties the possibility of derogating from the provisions of Article 24, paragraph 1; in the case of seasonable workers, the duration of the payments referred to in Article 21 may be adjusted to the conditions of their occupational activity.

**Article 25**

*Preventive measures*

197. Like Article 10, paragraph 3, this article shows the particular emphasis placed in the (revised) Code on prevention and rehabilitation. Effective protection against unemployment should include, notably, guidance, training and placement measures.

*Paragraph 1*

198. This paragraph takes into consideration the different national structures in the sphere of occupational guidance, training, retraining and integration or reintegration services; it is designed to give the unemployed access to the services mentioned, whether public or private.

*Paragraph 2*

199. In order to give full effect to the measures listed above, provision should be made for such occupational mobility aids as:

- allowances to help cover the cost of any travel and equipment necessary to benefit from the services referred to in paragraph 1 of Article 25;
- allowances paid during a prescribed period of occupational training or retraining;
- temporary digressive allowances designed to compensate for any loss of remuneration resulting from occupational reintegration;

and for such geographical mobility aids as:

- allowances to help cover travel and removal costs;
- a leaving or settling-in allowance.

These examples appear in paragraph 12 of ILO Recommendation No. 44, in paragraphs 4 and 5 of the Employment Promotion and Protection against Unemployment Recommendation (No. 176) of 1988 and in paragraph 6 of Article 24 of the Protocol to the European Code of Social Security.

200. The (revised) Code does not set any standard as to the amount of these allowances.

## **Part V – Old age benefit**

### **Article 26**

#### *Definition of the contingency*

##### *Paragraph 1*

201. This definition is identical to that in paragraph 1 of Article 15 of ILO Convention No. 128 and in Article 26 of the Code and Protocol.

202. The contingency arises solely by reason of survival beyond a prescribed age, without any requirement that the beneficiary be unfit to engage in a gainful activity.

##### *Paragraph 2*

203. The (revised) Code provides for the possibility, in certain conditions, of raising the age of qualification for a pension above the maximum age of 65.

204. The demographic criterion also used in the European Code of Social Security is based on the potential longevity of a population. If the life expectancy of a given population proved to be particularly long, the pensionable age could be raised.

205. The notion of "economic and social criteria" are not used in the European Code of Social Security, but appear in paragraph 2 of Article 15 of ILO Convention No. 128. They were therefore introduced into the (revised) Code in order to allow for possible changes in European legislation, justified not only by demographic criteria but also by a range of economic and social criteria linked in particular to changes in the labour market and in society. The economic and social situation could be such that people need to be kept working longer; for reasons of an economic and social nature, the reversal of the trend towards a lowering of the pensionable age in the Council of Europe member States could continue.

### **Article 27**

#### *Lowering of the pensionable age*

##### *Paragraph 1*

206. This paragraph is based on paragraph 3 of Article 15 of ILO Convention No. 128, paragraph 6 of ILO Recommendation No. 131, paragraph 24 of ILO Recommendation No. 162 and points II and III Resolution (76) 32 of the Council of Europe.

207. Countries which have a pensionable age of 65, or over, comply with the provisions of Article 27, paragraph 1 if they fulfil the conditions set out in at least one of the four cases presented below.

##### *Sub-paragraph (a)*

208. Where a Party opts to apply this sub-paragraph, an early pension must be awarded to workers engaged in arduous or unhealthy occupations. The intention is to give preferential treatment to workers who have been subjected to particularly harsh working conditions by allowing them to qualify at an earlier age for a pension. The conditions of eligibility for such earlier pensions are determined by each country's legislation on the basis of, for instance:

- a list of occupations likely to qualify workers for an early pension;
- evidence of having engaged during a prescribed period in work considered arduous or unhealthy: shift work, split-shift work, furnace work, all-weather work on building sites, underground work, assembly-line work, work at sea, etc.

*Sub-paragraph (b)*

209. Recognition of incapacity for work as grounds for entitlement to an early pension is subject to two conditions:

- the existence of incapacity to a degree prescribed by national legislation, which may be lower than that used to define invalidity;
- attainment of a prescribed age.

210. Incapacity, considered in such cases to be equivalent to premature old age, may be permanent or temporary.

211. Where the Party concerned has accepted Part IX (Invalidity benefit), it is deemed to comply with this sub-paragraph, since when a Party awards invalidity benefit in accordance with the standards laid down in Part IX, it must pay that benefit throughout the contingency or until it is replaced by old-age benefit which in turn has to comply with the standard of Part V (Old-age benefit).

*Sub-paragraph (c)*

212. Recognition of total unemployment as conferring entitlement to an early pension is subject to two conditions. The person in question:

- must have reached a prescribed age;
- must have been totally unemployed for at least one year after reaching the prescribed age.

213. Where the Party concerned has accepted Part IV (Unemployment benefit), it is deemed to comply with this sub-paragraph. Indeed, Part IV (Article 24, paragraph 3) provides that in the case of unemployed persons approaching retirement age, the minimum period of entitlement to unemployment benefit under this Part shall be extended until they have reached that age.

*Sub-paragraph (d)*

214. Where a Party opts to apply this sub-paragraph, the age of entitlement must be lowered when the beneficiary provides evidence of a period of contributions, occupational activity or residence longer than the periods prescribed in Article 29, paragraphs 2 and 3.

*Paragraph 2*

215. Paragraph 2 makes it possible to derogate from the provision in paragraph 1 regarding the lowering of the pensionable age. Parties which avail themselves of this possibility must provide in their legislation for both cases (early retirement and deferment) covered in sub-paragraphs (a) and (b).

*Sub-paragraph (a)*

216. This sub-paragraph is based on paragraph 21 of ILO Recommendation No. 162.

217. The intention is to allow anyone who so wishes to receive old-age benefit before reaching the prescribed age. This early retirement justifies a reduction in the benefit entitlement, so that the amount paid may not meet the standards laid down for Part V (Old-age benefit) and set out in the table appended to Part XI (Calculation of periodical payments). However, depending on the design of the system, the reductions must not exceed:

- either the actuarial equivalent; account being taken of the longer period during which benefit is paid and the loss suffered by the insurance system due to the reduction or absence of contributions during the early retirement period,
- or a deduction representing a certain percentage of the pension taking account of the early retirement period.

218. The words "under prescribed conditions" were included so that national legislation could determine the age at which, or other conditions under which, a person who so wishes could qualify for an early pension, for instance, the completion of a prescribed qualifying period.

*Sub-paragraph (b)*

219. This sub-paragraph is based on paragraph 18 of ILO Recommendation 131, paragraph 29 of ILO Recommendation 162 and point II.2 of Resolution (76) 32 of the Council of Europe.

220. The intention is to allow anyone to defer claiming a pension. Depending on the case, a person may have the possibility to defer claiming a pension:

- either because the qualifying conditions for a pension are not yet fulfilled (the case, for example, where the legislation requires a minimum of fifteen years of contributions before paying a pension);
- or in order to qualify for increased benefit because of the length of the deferment, and, where appropriate, because of additional periods of contributions, occupational activity, or residence.

In the first case, there is no increase in the pension. In the second case, however, the amount of the deferred pension must be increased to take account of additional periods in the calculation of the pension and/or the fact that payment is deferred.

*Paragraph 3*

221. This paragraph is based on paragraph 23 of ILO Recommendation 162 and paragraph 4 of item II of Resolution (76) 32 of the Council of Europe.

222. This paragraph allows Parties to derogate from the obligation to lower the pensionable age in accordance with the provision of Article 27, paragraph 1. Under Article 7, paragraph 1 of the (revised) Code, an alternative procedure is proposed in accordance with the provisions of this paragraph.

223. The amount of partial benefit granted in accordance with this paragraph need not coincide with the percentage prescribed for Part V (Old-age benefit) and set out in the table appended to Part XI (Calculation of periodical payments).

224. The Parties may introduce, inter alia, a progressive retirement system allowing protected persons between the ages of 60 and 65, for instance, to work part-time while they draw a special partial pension. This means that anyone over the age of 60 who reduces his or her working hours may, under certain conditions, draw a partial pension to offset in part the loss of earnings.

## **Article 28**

### *Personal scope*

#### *Paragraph 1*

225. Article 27 of the European Code of Social Security stipulates that States intending to assume the obligations deriving from this Part must protect either not less than 50 % of all employees or prescribed categories of the economically active population constituting not less than 20 % of all residents, or all residents whose means do not exceed a certain amount. The Protocol fixes the proportion at 80 % of at least all employees and 30 % of all residents. The (revised) Code provides for the protection of all employees, or of categories of the economically active population constituting in all at least 80 % of the total economically active population, or of all residents.

#### *Sub-paragraph (a)*

226. This sub-paragraph is based on Article 16, paragraph 1 (a) of ILO Convention No. 128.

227. The term "employees" covers all employees including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

228. Apprentices are protected as employees under the conditions laid down by national legislation. The concept of "apprentice" is determined by national legislation.

#### *Sub-paragraph (b)*

229. This sub-paragraph is based on Article 16 paragraph 1 (b) of ILO Convention No. 128.

230. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

#### *Sub-paragraph (c)*

231. This sub-paragraph is based on paragraph 1 (c) of Article 16 of ILO Convention No. 128.

#### *Paragraph 2*

232. This paragraph allows Parties to derogate to a certain extent from the provisions of sub-paragraphs (a) and (c) of paragraph 1 of Article 28 concerning personal scope in that it affords the possibility of actually covering only 90% of all employees or residents. It is a flexibility clause designed to facilitate ratification of the (revised) Code.

## **Article 29**

### *Calculation of benefit*

#### *Paragraph 1*

233. In case of survival beyond a prescribed age, the benefit must consist of periodical payments. The Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standard, whatever the categories of persons protected under Article 28.

#### *Paragraph 2*

234. When the contingency occurs, the old-age benefit provided for in the previous paragraph must be awarded, in conformity with the percentages established for Part V (Old-age benefit), which are set out in the table appended to Part XI (Calculation of periodical payments), to persons who have completed a period of 40 years of contributions, occupational activity or residence. Periods which may be treated as such shall be specified in national legislation. It has been found that the extension of the reference period set at 30 years by the European Code of Social Security and its Protocol is justified on account of the maturing of old-age schemes and the taking into consideration of any equivalent periods and is off-set by the raising of the percentages set out in the table appended to Part XI (Calculation of periodical payments). If the maximum period that may be taken into account under national legislation for calculating old-age pension is less than 40 years, it replaces the 40 year period for the purposes of the application of this paragraph.

#### *Paragraph 3*

##### *Sub-paragraph (a)*

235. This sub-paragraph refers to a type of legislation which protects the economically active population. This type of legislation imposes a prescribed contribution period on the person protected, after which the benefit may be calculated in one of three ways:

- either on the basis of the prescribed average annual number of contributions calculated on the basis of the total number of years considered during active life;
- or on the basis of a prescribed annual number of contributions;
- or on the basis of an annual average number of contributions obtained by dividing the total amount of contributions paid in the course of a working life by the number of years of work taken into account by that legislation;

In the cases described above, a contribution period which may exceed 40 years may be required by national legislation for the award of the standard benefit. This is a flexibility clause designed to facilitate ratification of the (revised) Code.

##### *Sub-paragraph (b)*

236. Where all residents are protected, a period of residence, which may exceed 40 years, may be required by national legislation for the award of the standard benefit. This is a flexibility clause designed to facilitate ratification of the (revised) Code.

237. This is particularly the situation in countries where the award of a full pension is subject to the completion of a very long period of residence.

*Paragraph 4*

238. Persons who have completed neither forty years of contributions, occupational activity or residence in accordance with paragraph 2 of this article, nor a prescribed period of contributions in accordance with paragraph 3 (a) of this article, nor a prescribed period of residence in accordance with paragraph 3 (b) of this article must receive reduced benefit if they fulfil the condition concerning the qualifying period laid down in Article 30; if there are no qualifying conditions, they must likewise receive reduced benefit.

239. The benefits referred to in this paragraph may be reduced in proportion to the period of contribution, occupational activity or residence completed in accordance with national legislation.

*Paragraph 5*

240. This paragraph covers the situation of the generation entering the old-age benefit scheme. The benefit may be a reduced benefit payable at the normal retiring age, or a benefit payable in accordance with the provisions of sub-paragraphs 2 and 3 of this article at a higher age.

241. The (revised) Code does not set any standards as to the amount of reduced benefits awarded in pursuance of this paragraph. The amount is determined by national legislation.

**Article 30**

*Condition of entitlement to benefit*

242. The words "in accordance with prescribed rules" enable national legislation to determine how the qualifying period must be completed (e.g. consecutive periods or not).

**Article 31**

*Duration of provision of benefit*

243. Benefit must be paid throughout the duration of the contingency, i.e. until the death of the beneficiary.

**Part VI – Work accident and occupational disease benefit**

**Article 32**

*Definition of the contingency*

*Paragraph 1*

244. This paragraph lists four contingencies. This paragraph is not concerned with the definitions of "work accident" and "occupational disease" which appear in Articles 33 and 34 respectively.

*Sub-paragraph (a)*

245. Protection against work accidents and occupational diseases must cover the need of medical care.

*Sub-paragraph (b)*

246. The notion of initial or temporary incapacity for work involving suspension of earnings is defined by national legislation. There are two general approaches to the definition of incapacity other than permanent:

- the term "initial incapacity" refers to national legislations which set a maximum period beyond which any continuing impairment or unfitness is judged to be no longer temporary;
- the term "temporary incapacity" refers to national legislations which stipulate that invalidity, incapacity or loss of a function becomes permanent once the condition of the victim has become stabilised so as to permit evaluation of any remaining impairment or unfitness; this is judged case by case.

Certain national legislations have a combination of the two methods.

*Sub-paragraph (c)*

247. This sub-paragraph refers to the suspension of earnings in the case of permanent incapacity (total or partial), evaluated on the basis of two fundamental conceptions: either the conception of professional invalidity or general incapacity for work (loss of earning capacity), or the conception of physical incapacity (loss of faculty).

*Sub-paragraph (d)*

248. This sub-paragraph refers to the loss of subsistence means suffered by the spouse and children on the death of a victim of a work accident or occupational disease.

*Paragraph 2*

249. This paragraph was introduced to prevent certain abuses, such as marriages of convenience, that could take place after the time of the work accident or start of the occupational disease. It can only apply to surviving spouses without children.

**Article 33**

*Definition of a work accident*

250. This article is based on Article 7, paragraph 1 of ILO Convention No. 121.

251. This article obliges States to define "work accident" and to lay down the conditions under which an accident on the way to or from work is to be treated as a work accident.

252. The explicit extension to include accidents on the way to or from work was inserted so as to take account of developments which have led most Council of Europe member States to treat such accidents as work accidents. Although this practice generally applies to all accidents on the way to or from work, account has been taken of the fact that, in some of these States, it is restricted to those instances where transport is arranged and paid for by the employer.

253. The final phrase, beginning with the word "unless", is designed to cover the case of Parties which afford protection against accidents of occupational origin on the same conditions as for accidents of non-occupational origin.

## **Article 34**

### *Definition of occupational disease*

#### *Paragraph 1*

254. Three alternative obligations are mentioned in this paragraph.

#### *Sub-paragraph (a)*

255. Legislations which opt for the list method recognise the diseases listed as occupational diseases. However, the phrase "under prescribed conditions" in the last line makes it possible to take into account special conditions such as the determination of the conditions of exposure to risks or the lapse of time before the acceptance of a claim, enabling the existence of an occupational disease to be established when there is a link between such disease and the occupation previously engaged in.

256. The list appended to Part VI (Work accident and occupational disease benefit) is the list of occupational diseases appended to ILO Convention No. 121, as amended at the 66th session of the International Labour Conference in June 1980.

#### *Sub-paragraph (b)*

257. Where national legislation contains a general definition of occupational disease, that definition should enable at least the diseases listed in the table appended to Part VI (Work accident and occupational disease benefit) to be regarded as occupational.

#### *Sub-paragraph (c)*

258. The list method has the advantage of corresponding to most laws and regulations in force in Council of Europe member States. However, for the purposes of reconciling the advantages of each of the two systems referred to in sub-paragraphs (a) and (b), while it avoids compounding their drawbacks, sub-paragraph (c) provides for their combination. But in order for the three systems to be reasonably balanced, the Parties may restrict the list referred to in sub-paragraph (c), to 5/6 of the occupational diseases listed in the table appended to Part VI (Work accident and occupational disease benefit). When the number corresponding to 5/6 of the diseases listed is not a whole number, it should be rounded up. When this text was drafted, the list contained 29 diseases and 5/6 therefore corresponded to 25.

259. As in sub-paragraph (a), however, the reference to "under prescribed conditions" authorises the establishment of a relationship between the disease and the occupation exercised.

#### *Paragraph 2*

260. This paragraph obliges the Committee to consider the question of the revision of the list of occupational diseases at least every five years and, in any event, following a revision of the list of occupational diseases appended to ILO Convention No. 121 or of that contained in the Recommendation of the Commission of the European Communities of 23 July 1962.

#### *Paragraph 3*

261. This paragraph specifies the manner in which amendments to the list of occupational diseases appended to Part VI (Work accident and occupational disease benefit) come into force. Parties which undertake to accept Part VI of the (revised) Code are bound by the list

appended to this Part; it is subsequently up to them to accept revisions to this list or not, without their acceptance of this Part being called into question.

## **Article 35**

### *Personal Scope*

#### *Paragraph 1*

262. Article 38 of the European Code of Social Security provides that States intending to accept the obligations deriving from this Part must protect 50% at least of all employees. The Protocol raises this proportion to 80%. The (revised) Code prescribes the protection either of all employees or of prescribed categories of the economically active population constituting in all at least 80% of the total economically active population.

#### *Sub-paragraph (a)*

263. The term "employees" covers all employees, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

264. Apprentices are protected as employees. The concept of "apprentice" is determined by national legislation.

#### *Sub-paragraph (b)*

265. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

266. Parties which make use of sub-paragraphs (a) and (b) of paragraph 1 of this article are not under any obligation to protect unemployed persons.

#### *Paragraph 2*

267. The expression "surviving spouses" refers to spouses who were dependent on the victim when the contingency arose. The situations in which surviving spouses are to be regarded as "incapable of meeting their own needs" will be determined by national legislation. The surviving spouses may be incapable of providing for their own needs, owing, for example, to their age or invalidity, or the fact of having children dependent on them.

#### *Paragraph 3*

268. This paragraph allows the Parties to cover only 95% of all employees (including apprentices), thereby derogating from the personal scope defined in paragraph 1, sub-paragraph (a) of this article. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

## **Article 36**

### *Material scope*

#### *Paragraph 1*

269. This paragraph is based on paragraph 1 of Article 10 of ILO Convention 121.

*Paragraph 3*

270. This paragraph is based on Article 10, paragraph 2, of ILO Convention No. 121.

271. This article contains for the Parties the same obligations in respect of work accidents and occupational diseases as those established by Article 10 (Part II - Medical care). Reference will therefore be made to the paragraphs of this explanatory report concerning Article 10 (paragraph 119 and subsequent paragraphs). However, attention should be drawn to two exceptions. The first is explained in sub-paragraph (h) of paragraph 1 and relates to the particular nature of Part VI (Work accident and occupational disease benefit). This sub-paragraph emphasises the need for a medical service within companies to provide first aid in emergencies and ongoing care for victims of minor injuries. The second exception appears in paragraph 2, which excludes any contribution to the cost of medical care, except where Article 44 is applicable (namely, coverage of victims of work accidents and occupational diseases under a general medical care scheme).

**Article 37**

*Nature and amount of benefit*

*Paragraph 1*

272. This paragraph is based on Article 13 of ILO Convention No. 121.

273. The benefit paid in the event of temporary or initial incapacity for work must consist of periodical payments. Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standards, whatever the categories of persons protected under Article 35.

274. Where the amount varies in the course of the contingency in pursuance of national legislation, the Party concerned meets the standard if the average amount of benefit complies with the provision of Article 71 or Article 72.

275. Unlike the European Code of Social Security, the (revised) Code makes no provision in Part VI (Work accident and occupational disease benefit) for a waiting period.

*Paragraph 2*

276. Just as medical care referred to in Article 36 may be provided under a general medical care scheme, so also may benefits for initial or temporary incapacity be awarded under a general sickness benefit scheme.

277. Parties whose social security system is such that benefits for initial or temporary incapacity are awarded under a general sickness benefit scheme must conform to the standard laid down in Part III (Sickness cash benefit). In that event, the conditions in which the requirements of paragraph 1 of Article 37 are met by the application of Part III must be at least as favourable as those prescribed in that Part. It should be noted that Part III expressly provides for the expiry of a waiting period; a Party may therefore legitimately prescribe a waiting period (see commentary on paragraph 1 of Article 17 above), though no qualifying period may be prescribed.

278. International supervision of the application of the (revised) Code in the case of Parties availing themselves of this provision will be exercised in respect of Part III (Sickness cash benefit) only, excluding the provisions concerning the qualifying period.

## **Article 38**

### *Nature and amount of benefit*

#### *Paragraph 1*

279. This paragraph is based on Article 14, paragraphs 1 and 2 of ILO Convention No. 121.

280. To take account of both social security schemes based on the criterion of loss of earning capacity and those based on loss of faculty, both possibilities are provided for in sub-paragraphs (a) and (b).

#### *Sub-paragraph (a)*

281. Where the beneficiary has incurred either a total loss of earning capacity which is likely to remain permanent or a corresponding loss of faculty, as defined by national legislation, the periodical payments must be calculated in accordance with Article 71 or Article 72.

#### *Sub-paragraph (b)*

282. Where the beneficiary has incurred a partial loss of earning capacity which is likely to remain permanent or a corresponding loss of faculty, as defined by national legislation, the periodical payments must be calculated as an equitable proportion of the benefit calculated in accordance with sub-paragraph (a).

#### *Paragraph 2*

283. This paragraph is based on Article 14, paragraphs 3 and 4, of ILO Convention No. 121.

284. This paragraph sets at 25% the degree of incapacity at which the benefit must take the form of a periodic payment unless Paragraph 3 is applied. This provision differs from that in the European Code of Social Security which does not set a fixed limit. The amount of lump-sum payment referred to in this paragraph must, for the same degree of incapacity, amount to at least three years' full periodic payments.

#### *Paragraph 3*

285. This paragraph is based on Article 15 of ILO Convention No. 121.

286. What is to be understood by "competent authority" will be specified by national legislation.

#### *Paragraph 4*

287. This paragraph is based on Article 17 of ILO Convention No. 121.

#### *Paragraph 5*

288. This paragraph is based on Article 16 of ILO Convention No. 121.

289. Where the victim's condition requires the constant attendance of another person, the benefits paid must be either increased or supplemented by benefits. The nature of these benefits and their mode of calculation and payment will be determined by national legislation.

## **Article 39**

### *Nature and amount of benefit*

#### *Paragraph 1*

290. The benefit paid in the event of the death of the victim of a work accident or occupational disease must take the form of periodical payments. The Parties may refer either to Article 71 or Article 72 in order to establish whether the periodical payments conform to the standard, whatever the categories of persons protected by virtue of Article 35.

#### *Paragraph 2*

291. The grant for funeral costs takes the form of a single payment made after the victim's death to certain categories of persons determined by national legislation.

## **Article 40**

### *Condition of entitlement*

292. This article is based on paragraph 2 of Article 9 of ILO Convention No. 121 and has no equivalent in the European Code of Social Security. However, these new provisions confirm the generally accepted interpretation of the European Code of Social Security.

293. No qualifying period may be required for the award of benefits in respect of work accidents or occupational diseases. With regard to occupational diseases, the requirement of a period of exposure to risk is not regarded as a qualifying condition.

## **Article 41**

### *Duration of provision of benefit*

294. This article is based on Article 9, paragraph 3 of ILO Convention No. 121.

295. This article provides that medical care and cash benefit must be provided throughout the contingency until the victim's recovery or death. In the case of the victim's death, cash benefits which cover loss of means of support must be paid to the surviving spouse and children throughout the contingency. In all cases, the provisions of Article 74 and those relating to the remarriage of the surviving spouse (sub-paragraph (g) of Article 1) remain applicable.

## **Article 42**

### *Prevention and occupational and medical rehabilitation*

296. This article is based on Article 26 of Convention No.121. It bears witness to the fact that in the (revised) Code, the compensatory measures provided for in the preceding articles and the prevention and rehabilitation measures provided for here are complementary and indissociable. It reflects the provisions existing in most member States for the benefit of persons obliged to change their occupation on account of an occupational disease or work accident. All such measures are determined by national legislation.

*Sub-paragraph (a)*

297. The Parties should take all the necessary measures for the prevention of work accidents and occupational diseases such as, for instance, providing firms with information and advice, fostering an awareness of preventive measures among the workers, giving them training and carrying out works inspections. The Parties may also encourage the development and improvement of safety measures, notably by means of financial help or a weighting system (adjustment of social security contribution rates or insurance premiums on the basis of the number and seriousness of accidents in the firm or the effort it has made to take preventive measures). Lastly, the Parties may contribute to the organisation of industrial medicine services.

*Sub-paragraph (b)*

298. These measures include the organisation of services intended to facilitate functional and occupational rehabilitation of the disabled, either in their former occupation or in a new gainful activity.

*Sub-paragraph (c)*

299. Measures to facilitate the placement of disabled persons in suitable employment undoubtedly constitute a type of measure which is of prime importance in the long term; for this reason, the Parties should further them, for example, by subsidising firms in respect of jobs reserved for disabled workers or granting loans for adaptation purposes. In all cases, it is important to take into account the victim's wish to resume his previous activity, having regard to any possible psychological effects this may entail.

**Article 43**

*Specific measures for the prevention of occupational diseases*

*Paragraph 1*

300. Here again, the idea is to introduce measures for the prevention of occupational diseases by requiring workers, likely to contract an occupational disease to undergo a medical examination to ensure that they are still fit to continue in the job in question. The frequency of such examinations and the conditions governing them are determined by national legislation.

301. The aim of these preventive examinations is to provide better health protection for workers and detect diseases from which they might be suffering. They should also enable industrial medicine services to monitor the course of disorders which represent a threat to workers' health on account of the requirements peculiar to their occupation.

*Paragraph 2*

302. When workers exposed to the risk of an occupational disease are obliged to change their job, they must be offered the benefit of the services and measures prescribed in sub-paragraphs (b) and (c) of Article 42.

**Article 44**

*Substitution clause*

303. This paragraph is based on paragraph 1 of Article 11 of ILO Convention No. 121.

304. Parties in which the social security system is such that the victims of work accidents or occupational diseases receive medical care as part of a general medical care scheme must satisfy the standards set out in Part II (Medical care). In that event, the conditions in which the requirements of paragraph 1 (a) of Article 32 are met by applying Part II must be at least as favourable as those prescribed in that Part. It should be noted that Part II expressly provides for the sharing of the cost of medical care, so that in applying that Part, a Party may legitimately provide for such cost-sharing (see commentary on paragraph 2 of Article 10 above), but no qualifying period may be prescribed.

305. The (revised) Code makes no provision in Part VI (Work accident and occupational disease benefit) for sharing in the cost of medical care. Only those Parties which apply Part II (Medical care) may prescribe cost-sharing to a certain degree.

306. International supervision of the application of the (revised) Code in the case of Parties availing themselves of this provision will be exercised in respect of Part II (Medical care) only, excluding the provisions concerning the qualifying period.

## **Part VII – Family benefit**

### **Article 45**

#### *Definition of contingency*

307. The contingency covered shall be financial responsibility for the maintenance of children. The use of the expression "as prescribed" should make it possible for national legislation to determine the circumstances children are deemed to be maintained. The words "as prescribed" have no effect whatsoever on the personal scope defined in Article 46.

### **Article 46**

#### *Personal scope*

#### *Paragraph 1*

308. Article 41 of the European Code of Social Security stipulates that States which accept the undertaking in Part VII are to protect either at least 50% of all employees or prescribed categories of the economically active population constituting not less than 20% of all residents. In the Protocol, the proportions are 80% and 30% respectively. In the (revised) Code, the persons protected are to comprise either the children of all employees including those of apprentices, or the children of all persons in the economically active population, or the children of all residents, or the children of all residents whose means for the duration of the contingency do not exceed certain limits.

309. In accordance with Article 74, paragraph 1 (f) of the (revised) Code, the Parties have no obligation to pay benefits outside their national territory, so that benefits may be paid only to the resident children of employees, persons in the economically active population or residents.

#### *Sub-paragraph (a)*

310. The term "employee" covers all employees, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

311. Apprentices are protected in the same way as employees. The concept of "apprentice" is determined by national legislation.

312. In order to comply with Article 46, paragraph 1 (a), unemployed persons do not have to be taken into account. Persons drawing unemployment benefit are explicitly covered by Article 46, paragraph 3, and therefore do not come under this sub-paragraph.

*Sub-paragraph (b)*

313. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

314. In order to comply with Article 46, paragraph 1 (b), unemployed persons do not have to be taken into account. Persons drawing unemployment benefit are explicitly covered by Article 46, paragraph 3, and therefore do not come under this sub-paragraph.

315. Parties which make use of sub-paragraph (a) or (b) of paragraph 1 of Article 46 are not under any obligation to protect unemployed persons not receiving benefit.

*Sub-paragraph (c)*

316. For the interpretation of this sub-paragraph, account must be taken of the remarks under Article 1, sub-paragraph (d), i.e. the definition of the term "resident" must be taken into account.

*Sub-paragraph (d)*

317. This sub-paragraph was included in order to take account of the legislation of certain countries which protects all residents whose means for the duration of the contingency do not exceed the limits stipulated in national legislation.

*Paragraph 2*

318. This paragraph allows Parties to cover the children of only 95% of employees (including apprentices) or of 90% of the total working population, thereby derogating from the personal scope defined in Article 46, paragraph 1, sub-paragraphs (a) and (b). It is a flexibility clause designed to facilitate ratification of the (revised) Code.

*Paragraph 3*

319. The Parties which make use of Article 46(1)(a) or (b) must protect simultaneously the children of the three categories of persons referred to here. This paragraph extends the personal scope of Part VII (Family benefit) to people receiving certain benefits (invalidity, old-age, survivor's or permanent disablement to a prescribed degree, or survivor's in the case of work accident/occupational disease, or unemployment), while leaving it to national legislation to define the entitlement conditions.

320. The Parties have no obligation to protect children exclusively by means of family benefits; by using the expression "under prescribed conditions", it is possible to afford them protection by means of supplements to, or higher rates of, other benefits such as invalidity, old-age, surviving spouse's, permanent disablement or unemployment benefit, or surviving children's benefit.

## **Article 47**

### *Material scope*

321. The term "for families" in sub-paragraphs (a) and (b) refers to families responsible for children, as prescribed in Article 45.

### *Sub-paragraph (a)*

322. When supplements to, or higher rates of, pensions or annuities awarded in respect of children or surviving children's benefit are paid in the form of cash benefits, they may be regarded as periodical payments.

### *Sub-paragraph (b)*

323. The Parties must offer a combination of at least two types of benefit. This minimum suffices to meet the requirement and means that there is no need for all such combinations to include periodical payments.

324. As in sub-paragraph (a), supplements to, or higher rates of, pensions or annuities awarded in respect of children or benefits granted to surviving children may be provided by the branches concerned; where they are not in the form of cash payments, they must, in order to fall within the material scope of Part VII, be either benefits in kind or tax relief or social services.

## **Article 48**

### *Condition of entitlement*

#### *Paragraph 1*

325. Where a Party protects either the children of all employees or the children of all persons in the economically active population, entitlement to benefit must not be made subject to the completion of a qualifying period.

#### *Paragraph 2*

326. Where a Party protects either the children of all residents or the children of all residents whose means for the duration of the contingency do not exceed certain limits, entitlement to benefit may be made subject to the completion of a six month qualifying period prior to the award of benefit.

327. This enables Parties to avoid the provision of benefit to families that have not established a sufficient link with the social security scheme in question.

## **Article 49**

### *Amount of benefit*

328. Since the mode of calculation adopted here is specific to Part VII, family benefits do not appear in the table appended to Part XI (Calculation of periodical payments).

329. Extending the personal scope of Part VII to all residents has made it possible to take national parameters into account in the calculation of family benefits. This provision makes it possible for the Parties to choose which of the two modes of calculation provided for in sub-

paragraphs (a) and (b) enables them to comply with the requirements of this article regardless of the personal scope accepted.

#### **Article 50**

##### *Duration of provision of benefit*

330. Family benefits shall be provided:

- until the child reaches 16 years of age, or the minimum school-leaving age; or
- until the child reaches an age higher than that mentioned above, such age to be prescribed by national legislation according to the definition of "child" in Article 1 (h) (see comments concerning Article 1, sub-paragraph (h)) in the case of apprenticeship, continuing education, or chronic illness or physical or mental disability rendering the child unfit for work.

### **Part VIII – Maternity benefit**

#### **Article 51**

##### *Definition of contingencies*

331. The contingencies covered are on the one hand pregnancy, confinement and their consequences, and on the other the resulting suspension of earnings. The Parties have to cover all these contingencies cumulatively.

#### **Article 52**

##### *Personal scope*

##### *Paragraph 1*

##### *Sub-paragraph (a)*

332. The provisions concerning the personal scope of medical care in the event of maternity are identical to those of Part II (Medical care).

333. Article 48 of the European Code of Social Security provides that States meaning to fulfil the obligations embodied in this Part must protect either all women belonging to prescribed categories of employees constituting in all at least 50% of all employees and the wives of men belonging to these categories, or all women belonging to prescribed categories of the economically active population constituting in all at least 20% of all residents and the wives of men belonging to these categories. The Protocol raises these proportions to 80% and 30% respectively.

334. The (revised) Code provides for the protection either of all employed women and the dependent wives of all employees, or of all economically active women and the dependent wives of economically active men, or of all women residents. This sub-paragraph therefore lists three possibilities, two of which concern occupationally based schemes, i.e. only concern persons exercising a gainful activity (sub-paragraphs (i) and (ii)), while the third concerns universal schemes (sub-paragraph (iii)).

*Sub-paragraph (a) (i)*

335. The term "employed women" covers all employed women, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

336. Female apprentices are protected in the same way as employed women. The concept of apprentice is determined by national legislation.

337. Employed women, female apprentices, their female children, the dependent wives and female children of male employees or apprentices are protected.

338. In order to comply with Article 52, paragraph 1 (a) (i), neither unemployed women and their children nor the dependent wives of unemployed men and their children are to be taken into account. Unemployed women in receipt of benefit, and their children, and the dependent wives of unemployed men in receipt of benefit, and their children are dealt with specifically in paragraph 3 of Article 52 and are therefore not covered by this paragraph.

*Sub-paragraph (a) (ii)*

339. The economically active population covers employed women (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed women.

340. Economically active women, their female children, and the dependent wives and female children of economically active men are protected.

341. In order to comply with Article 52, paragraph 1 (a) (ii), neither unemployed women and their children nor the dependent wives of unemployed men and their children are to be taken into account. Unemployed women in receipt of benefit, and their children, and the dependent wives of unemployed men in receipt of benefit, and their children are dealt with specifically in paragraph 3 of Article 52 and are therefore not covered by this paragraph.

342. Parties availing themselves of sub-paragraphs (a) (i) and (ii) of paragraph 1 are under no obligation as regards the protection of unemployed women not in receipt of benefit and their children or the protection of the dependent wives and the children of unemployed men not in receipt of benefit.

*Sub-paragraph (a) (iii)*

343. This is a new provision and does not appear in the European Code of Social Security. It was introduced with a view to harmonising the possible options with regard to personal scope with the other branches of the (revised) Code which includes the option of protecting all residents.

*Sub-paragraph (b)*

344. The provisions concerning the personal scope of maternity benefit are identical to those of Part III (Sickness cash benefit).

345. Article 48 of the European Code of Social Security provides that States meaning to fulfil the obligations embodied in this Part must protect either all women belonging to prescribed categories of employees constituting in all at least 50% of all employees and the wives of men belonging to these same categories or all the women belonging to prescribed categories of the economically active population constituting in all at least 20% of all residents and the wives of men belonging to these same categories. The Protocol raises these proportions to 80% and 30% respectively. The (revised) Code provides for the protection either of all

employed women, or of all women belonging to prescribed categories of the economically active population constituting in all at least 80% of the total economically active population.

346. The commentaries under points 338, 341 and 342 must be borne in mind in interpreting this sub-paragraph. However, where, in the event of the pregnancy of an unemployed woman, a Party ceases to pay her unemployment benefit but pays her maternity benefit instead, Part VIII (Maternity benefit) shall take the place of Part IV (Unemployment benefit). With regard to maternity cash benefits, the (revised) Code lays no obligation on the Parties to protect unemployed pregnant women under the provisions of Part VIII (Maternity benefit). However, if the Parties choose this option, they must meet the requirement of Part VIII (Maternity benefit).

*Sub-paragraph (b) (i)*

347. The term "employed women" covers all employed women, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

348. Female apprentices are protected in the same way as employed women. The concept of "apprentice" is determined by national legislation.

*Sub-paragraph (b) (ii)*

349. The expression "economically active women" includes employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed women.

*Paragraph 2*

*Sub-paragraph (a)*

350. This sub-paragraph offers the Parties the possibility of derogating to some extent from the personal scope defined in sub-paragraph (a) of paragraph 1 of Article 52. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

*Sub-paragraph (a) (i)*

351. This sub-paragraph allows Parties to protect only the women belonging to categories of employees constituting 95% of all employees, and their female children, as well as the wives of men belonging to these categories, and their female children, in derogation of the personal scope defined in sub-paragraph (a) (i), of paragraph 1 of Article 52.

*Sub-paragraph (a) (ii)*

352. This sub-paragraph allows Parties to protect only the women belonging to categories of the economically active population constituting 90% of the total economically active population, and their female children, as well as the wives of men belonging to these categories, and their female children, in derogation of the personal scope defined in sub-paragraph (a) (ii), paragraph 1 of Article 52.

*Sub-paragraph (a) (iii)*

353. This sub-paragraph allows Parties to protect only the women belonging to categories of residents constituting 90% of all residents, and their female children, in derogation of the personal scope defined in sub-paragraph a (iii), paragraph 1 of Article 52.

*Sub-paragraph (b)*

354. This sub-paragraph allows Parties to derogate, to some extent, from the provisions of sub-paragraph (b) (i), paragraph 1 of Article 52 concerning personal scope, in the sense that it offers them the possibility of covering only the women in categories of employees constituting 90% of all employees.

*Paragraph 3*

355. With regard to medical care need, the Parties which make use of Article 52(1)(a)(i) or (a)(ii) must protect simultaneously the four categories of persons referred to here:

- women receiving invalidity, old-age or survivors' benefit, together with women applying for such benefits;
- women receiving benefit in respect of permanent disablement to a prescribed degree of survivors' benefit, in the case of a work accident or occupational disease, together with women applying for such benefits;
- women receiving unemployment benefit and
- dependent wives of men who are in receipt of the benefits listed above or are claiming invalidity, old-age or survivors' benefit, and their children.

356. This paragraph extends the personal scope of Part VIII (Maternity benefit) to people receiving or claiming certain benefits (invalidity, old-age, survivor's or permanent disablement to a prescribed degree or survivor's in the case of work accident/occupational disease, or unemployment), while it leaves national legislation to define the entitlement conditions.

*Paragraph 4*

357. This is again a flexibility clause but, in contrast to paragraph 2, a substitution arrangement is provided for, since Parties may derogate from the personal scope of Part VIII (Maternity benefit) if they offer some compensation in accordance with the provisions of paragraph 1 of Article 7.

358. This derogation is based on the granting of long-term care to all women residents. The scope of protection for other categories of care may then be more restricted than under paragraphs 1 (a), 2 (a). and paragraph 3 of Article 52, provided that at least 80% of all employed women, or at least 75% of all economically active women, or at least 70% of all women residents are protected.

**Article 53**

*Material scope*

*Paragraph 1*

359. This paragraph lists the medical services for pregnancy, confinement and their consequences which have to be covered by the legislation of Parties which accept the obligations established in Part VIII (Maternity benefit). However, it is important in this respect, given the similarities with Part II (Medical care), to refer to considerations clarified in Article 10 of the European Code of Social Security (revised) (paragraph 123 and subsequent paragraphs of the Explanatory Report), as was the case for Article 36.

*Paragraph 2*

360. In the case of prenatal care, care during confinement and post-natal care, and in the event of hospitalisation, the European Code of Social Security and Protocol make no provision for cost-sharing. Under the Protocol to the European Code of Social Security, the beneficiary or her breadwinner may be required to meet part of the cost of pharmaceutical supplies not provided for in the Code in the event of pregnancy, confinement and their consequences, and an upper limit is fixed on the share of the cost thus borne: it must not exceed 25% of the expenditure incurred.

361. This precise figure for the share of the cost has not been retained in the (revised) Code, but has been replaced by a more flexible provision.

362. The concept of cost-sharing implies that part of the cost is borne by the beneficiary or her breadwinner, which rules out the full cost of medical care being borne by the person protected. This paragraph is designed to limit the beneficiaries' share. The cost they have to bear must not impose hardship and must not risk rendering medical and social protection less effective (see also comments on paragraph 2 of Article 10, in paragraph 132 and subsequent paragraphs of the Explanatory Report).

*Paragraph 3*

363. This paragraph, specifically concentrating on women protected under Part VIII (Maternity benefit), is, however, similar to paragraph 3 of Article 10 (Part II - Medical care). Reference will also be made to the text in the Explanatory Report relating to this last provision (paragraphs 133 and 134).

**Article 54**

*Nature and amount of benefit*

364. The benefit paid in the contingency referred to in sub-paragraph (b) of Article 51 must take the form of periodical payments. The Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standard set, whatever the categories of persons protected under Article 52.

365. Where the amount varies in the course of the contingency, in pursuance of national legislation, the Party concerned meets the standard if the average amount of benefit conforms to the provisions of Article 71 or Article 72.

**Article 55**

*Condition of entitlement*

366. This article appears in a different form in the European Code of Social Security. If a qualifying period is required, it must be limited and be designed to avert abuse.

367. This article allows the Parties to require the completion of a qualifying period before benefit is awarded. However, such a period may be required only for the payment of maternity cash benefit and not for the provision of medical care.

368. The duration of the qualifying period necessary to prevent abuse is determined by national legislation.

## **Article 56**

### *Duration of provision of benefit*

#### *Paragraph 1*

369. Except in the cases enumerated in Article 74, medical care must be provided for a protected person throughout the duration of the contingency referred to in sub-paragraph (a) of Article 51.

#### *Paragraph 2*

370. Maternity cash benefit must be paid in principle throughout the prescribed period of abstention from work.

371. It is possible to restrict the payment of maternity cash benefit to 14 weeks; but if a Party's legislation prescribes a longer period of compulsory abstention from work, maternity cash benefit must be paid throughout that period.

## **Article 57**

### *Substitute provision in the event of parental leave*

372. This article bears witness to the attention given to the payment benefit in respect of parental leave. Some Parties' legislation allows couples to choose whether the father or the mother is to look after the child and consequently receive the cash benefit during the period of parental leave.

373. This article concerning parental leave may replace the provisions of this Part concerning the payment of benefit in respect of maternity leave, provided always that the benefit paid in respect of parental leave is at least as favourable.

## **Part IX – Invalidity benefit**

### **Article 58**

#### *Definition of the contingencies*

374. This article is based on Article 8 of ILO Convention No. 128.

375. This article is much broader in scope than Article 54 of the European Code of Social Security since it covers not only incapacity resulting from inability to engage in occupational activities (sub-paragraph (a)), but also in sub-paragraphs (b) and (c), inability to engage in usual activities and the incapacity of children resulting from congenital disability or from invalidity occurring before the minimum school-leaving age.

376. In order to be recognised as such, the incapacity provided for in sub-paragraphs (a), (b) and (c) of this article, the degree of which is prescribed by national legislation, must be permanent or persist beyond a time-limit set by that legislation. Protection must not be limited to cases of total permanent invalidity preventing all occupational activity. The (revised) Code, unlike Article 54 of the Protocol, does not however lay down any minimum regarding the degree of incapacity to be covered.

377. Parties are not bound by Part IX (Invalidity benefit) to protect against temporary incapacity; protection in case of temporary incapacity is dealt with in Part III (Sickness cash benefit).

## **Article 59**

### *Personal scope*

#### *Paragraph 1*

378. Article 55 of the European Code of Social Security provides that States intending to assume the obligations deriving from this Part must protect either prescribed categories of employees constituting not less than 50% of all employees or prescribed categories of the economically active population constituting not less than 20% of all residents, or all residents whose means during the contingency do not exceed limits prescribed by national legislation. The Protocol prescribes the proportions of 80% and 30% respectively. The (revised) Code provides for the protection either of all employees, or of prescribed categories of the economically active population constituting in all not less than 80% of the total, or of all residents.

379. There is a link between Article 58 defining contingencies and Article 59 determining the personal scope of Part IX (Invalidity benefit). Indeed, when applying Article 59, the Parties may choose:

- to apply Article 59, paragraph 1 (a), in which case, they will use the contingency defined by Article 58 (a), as (b) and (c) do not apply;
- to apply Article 59, paragraph 1 (b), in which case they will use the contingency defined by Article 58 (a), as (b) and (c) do not apply;
- to apply Article 59, paragraph 1 (c) and cover all residents including people who are not economically active and minors, in which case they will use all three contingencies defined by Article 58.

#### *Sub-paragraph (a)*

380. This sub-paragraph is based on Article 9, paragraph 1 (a) of ILO Convention No. 128.

381. The term "employees" covers all employees, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

382. "Apprentices" are protected as employees according to the provisions of national legislation. The concept of "apprentice" is defined by national legislation.

#### *Sub-paragraph (b)*

383. This sub-paragraph is based on Article 9, paragraph 1 (b) of ILO Convention No. 128.

384. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

385. Parties which make use of sub-paragraphs (a) or (b) of paragraph 1 of this article are not under any obligation to protect unemployed persons.

#### *Sub-paragraph (c)*

386. This sub-paragraph is based on Article 9, paragraph 1 (c) of ILO Convention No. 128.

*Paragraph 2*

387. This paragraph allows Parties to protect only 90% of employees (including apprentices) or residents, in derogation of the scope defined in Article 59, paragraph 1, sub-paragraphs (a) and (c). It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

**Article 60**

*Calculation of benefit*

*Paragraph 1*

388. In the case of incapacity to a prescribed degree to work or to earn, the benefit must consist of periodical payments. The Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standard where, by virtue of Article 59, paragraphs 1 (a) or 1 (b), they protect all employees (or only 90% of them, if Parties avail themselves of the possibility afforded them under Article 59, paragraph 2, sub-paragraph (a)) or 80% of the economically active population.

*Paragraph 2*

389. This paragraph is to be interpreted as a derogation from the methods of calculation laid down in the previous paragraph since the Parties may take the beneficiaries means into consideration and so calculate the benefit as prescribed in Article 73 if they protect all residents and do not make entitlement conditional on any qualifying period. Welfare or social assistance systems may be taken into account for the purposes of compliance with the obligation laid down in this paragraph where they accord the persons concerned a right to protection.

*Paragraph 3*

390. In the case of a prescribed degree of incapacity to engage in everyday activities, the benefit must consist of periodical payments. The Parties may refer either to Article 72 or to Article 73 for the purpose of establishing that the periodical payments comply with the standard where, by virtue of Article 59, paragraph 1 (c), they protect all residents (or only 90% of them if Parties avail themselves of the possibility offered to them in Article 59, paragraph 2, sub-paragraph (b)).

*Paragraph 4*

391. Where a child suffers from a prescribed degree of incapacity resulting from a congenital disability or from invalidity occurring before the minimum school-leaving age, the benefits paid shall include:

- either cash allowances for education or adaptation, the latter being designed, for example, to finance the purchase of equipment necessary for adapting the family home;
- or specific measures to assist with school education or occupational training, and additional measures.

The specific characteristics of these allowances and measures are determined by national legislation.

*Paragraph 5*

392. This paragraph is intended for invalidity insurance schemes in which the amount of benefit paid is dependent on the length of the insurance period. This text provides for three possibilities for determining the benefit to be guaranteed to protected persons at the fixed rate shown in the table appended to Part XI (Calculation of periodical payments).

393. The first possibility, set out in sub-paragraph (a), requires that benefit must be guaranteed to all protected persons who have completed a period of fifteen years of contributions, occupational activity or residence. The periods which may be treated as such are determined by national legislation. The period of fifteen years of contributions or occupational activity is intended for schemes protecting economically active persons. The period of fifteen years of residence is intended for schemes which protect all residents.

394. The second possibility is set out in sub-paragraph (b), whereby a period of thirty years (instead of fifteen years) of contributions, occupational activity or residence may be taken into account, on condition that the legislation making use of this sub-paragraph, for the purpose of calculating the benefit, takes account of the period, on the basis of notional periods, between the occurrence of the risk and a specific age, as determined by national legislation. This second possibility concerns systems protecting economically active persons, as well as those protecting residents.

395. The third possibility is set out in sub-paragraph (c), which concerns exclusively systems protecting economically active persons. This sub-paragraph provides for the granting of a benefit to protected persons who have completed a maximum period of three years of contributions, on condition however that during their working life they have fulfilled the insurance requirements as prescribed by national legislation.

*Paragraph 6*

396. Persons who have not fulfilled the conditions prescribed in paragraph 5, sub-paragraph (a), (b) or (c) of Article 60, shall nevertheless be paid reduced benefit if they fulfil the conditions in respect of a qualifying period laid down in paragraph 1 of Article 61; if there are no qualifying conditions, they must likewise receive reduced benefits.

397. Benefits referred to in this paragraph may be reduced in proportion to the length of the insurance period, occupational activity or residence completed in accordance with national legislation.

*Paragraph 7*

398. This paragraph aims at invalidity insurance schemes in which benefits are paid regardless of the length of the insurance period. This is a distinct provision unconnected to that set out in paragraph 5; the latter referring to invalidity insurance schemes under which the benefits depend on the length of the insurance period.

399. The benefit in question may amount to a percentage of ten units less than that shown in the table appended to Part XI (Calculation of periodical payments). It must be guaranteed to all protected persons who have completed a qualifying period not exceeding 12 months.

400. National legislation determines the way in which the qualifying period is effected.

*Paragraph 8*

401. When the beneficiary's condition requires the constant attendance of another person, the benefits provided must be increased or additional or special benefit must be paid. The nature of these benefits and the way in which they are calculated and paid is determined by national

legislation. However, it is important to note that, in accordance with the provisions of paragraph 2 of Article 60 of the (revised) Code, the payment of invalidity benefits may be subject to means testing through the application of Article 73 of the (revised) Code. Paragraph 8 of Article 60 makes no mention of any means test for increased invalidity benefit or special benefit for beneficiaries requiring the constant attendance of another person. However, since in certain cases (where means exceed the specified limit) the invalidity benefit may be zero, the increase will also be zero. As for the special benefit also mentioned, this is due to the "beneficiary" of the invalidity benefit; a beneficiary who does not exist if no invalidity benefit is paid.

402. The (revised) Code does not set any standard as to the amount of these benefits.

## **Article 61**

### *Conditions of entitlement to benefit*

#### *Paragraph 1*

403. The inclusion of the words "in accordance with prescribed rules" allows national legislation to define the manner in which the qualifying period is to be completed.

#### *Paragraph 2*

404. The aim of this paragraph is to permit national legislations to provide for a qualifying period of more than five years for persons entering the insurance system at a more advanced age, because the probability of the contingency occurring is greater.

## **Article 62**

### *Occupational and medical rehabilitation measures*

405. The Parties must promote measures designed to reduce the social and financial consequences of the incapacity.

406. The measures listed in sub-paragraphs (a), (b) and (c) of this article are cumulative.

#### *Sub-paragraph (a)*

407. These measures include the organisation of services designed to facilitate the functional and occupational rehabilitation of the disabled, either in their former occupation or in a new gainful activity.

#### *Sub-paragraph (b)*

408. Measures designed to facilitate the placement of the disabled in suitable employment are undoubtedly of major importance in the long term, which is why the Parties must take such measures, for example by making grants to firms in respect of jobs reserved for disabled workers or offering job adaptation loans.

#### *Sub-paragraph (c)*

409. The Parties must also provide:

1. aids to occupational mobility, such as, for instance;

- allowances to help cover the cost of the travel and equipment necessitated by the rehabilitation and services offered;
- allowances payable for a prescribed period of occupational training or retraining;
- temporary digressive allowances designed to compensate if necessary for any loss of earning resulting from resettlement in a job;

2. aids to geographic mobility, such as:

- allowances to help cover travel and removal expenses;
- severance or installation allowances.

The (revised) Code does not set any standard as to the amount of these allowances.

410. The Parties must also develop social integration measures for disabled persons, such as the provision of amenities.

**Article 63**

*Duration of payment of benefit*

411. Except in the cases enumerated in Article 74, the benefits provided for in Article 60 must be paid throughout the contingency or until payment of old-age and survivors' benefit.

**Part X – Survivors' benefit**

**Article 64**

*Definition of the contingency*

*Paragraph 1*

412. This paragraph is based on Article 21, paragraph 1 of ILO Convention No. 128.

413. The contingency covered is loss of support suffered by a surviving spouse, defined in Article 1 (g) irrespective of sex, and by any child as the result of the death of the breadwinner.

414. The concept of "child" must be interpreted in the light of the definition of Article 1 (h).

*Paragraph 2*

415. This paragraph is based on Article 21, paragraph 2 of ILO Convention No. 128.

416. The award of survivors' benefit to the surviving spouse may be made conditional upon the latter having attained the age prescribed by national legislation. However, this age must be lower than that of admission to the old-age pension.

*Paragraph 3*

417. This paragraph is based on Article 21, paragraph 3 of ILO Convention No. 128.

418. No age requirement may be imposed where:

- the surviving spouse is presumed to be unfit for work in accordance with conditions prescribed by national legislation;

- the surviving spouse has at least one dependent child, in accordance with conditions prescribed by national legislation. Contrary to Article 21, paragraph 3 of ILO Convention No. 128, Article 64, paragraph 3 of the (revised) Code does not require this child be that of the deceased person.

*Paragraph 4*

419. This paragraph is based on Article 21, paragraph 4 of ILO Convention No. 128.

420. In the case of a childless surviving spouse, eligibility for benefit may be made conditional upon attainment of the age referred to in paragraph 2 above and upon the marriage having lasted for a length of time specified by national legislation.

**Article 65**

*Personal scope*

*Paragraph 1*

421. This paragraph is based on Article 22, paragraphs 1 (a), (b) and (c) of ILO Convention No. 128.

422. Article 61 of the European Code of Social Security provides that the States intending to assume the obligations deriving from this Part must protect either the wives and children of breadwinners belonging to prescribed categories of employees constituting in all not less than 50% of all employees; or the wives and children of breadwinners belonging to prescribed categories of the economically active population constituting in all not less than 20% of all residents or, where they are residents, all widows and children who have lost their breadwinners and whose means while the contingency lasts do not exceed certain limits. The Protocol prescribes the proportions of 80% and 30% respectively for categories listed in sub-paragraphs (a) and (b) of Article 61. The (revised) Code provides for the protection either of the surviving spouses and their children whose breadwinners were employees or, under prescribed conditions, apprentices, or of the surviving spouses and children of breadwinners belonging to prescribed categories of the economically active population constituting in all at least 80% of the economically active population, or all residents surviving spouses and children, or all surviving spouses and children who have lost their breadwinner who was resident.

423. This paragraph sets out three possibilities, two of which concern systems based on the protection of occupational categories, i.e. only concern persons exercising a gainful activity (sub-paragraphs (a) and (b)), while the third concerns universal schemes (sub-paragraph (c)).

*Sub-paragraph (a)*

424. The term "employee" covers all employees, including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable.

425. Apprentices are protected as employees according to the provisions of national legislation. The concept of "apprentice" is defined by national legislation.

*Sub-paragraph (b)*

426. The economically active population covers employees (including part-time workers and civil servants, except for the latter in cases where Article 7, paragraph 3 is applicable) and self-employed persons.

427. Parties which make use of sub-paragraphs (a) and (b) of paragraph 1 of this article are not under any obligation to protect unemployed persons.

*Sub-paragraph (c)*

428. Two alternative provisions are set out in this sub-paragraph: the first aims at protecting all surviving spouses and children who reside on the territory of the Party, even if the deceased breadwinner did not reside there himself; the second aims at protecting all surviving spouses and children even if they do not reside on the territory of the Party, provided that the breadwinner resided there before his death.

*Paragraph 2*

*Sub-paragraph (a)*

429. This sub-paragraph allows Parties to protect the surviving spouses and children of only 90% of employees (including apprentices), in derogation of the personal scope defined in paragraph 1 (a) of Article 65. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

*Sub-paragraph (b)*

430. This sub-paragraph allows Parties to derogate to some extent from the provisions of sub-paragraph (c), paragraph 1 of Article 65 concerning personal scope, in the sense that it offers Parties the possibility of protecting only 90% of surviving spouses and surviving children who are resident, or all surviving spouses and all children of only 90% of residents. It is thus a flexibility clause designed to facilitate the ratification of the (revised) Code.

**Article 66**

*Calculation of benefit*

*Paragraph 1*

431. Survivors' benefit must consist of periodical payments. The Parties may refer either to Article 71 or to Article 72 for the purpose of establishing that the periodical payments comply with the standard, whatever the categories of persons protected under Article 65. Benefits for surviving children may be paid in the form of increased family allowances, an orphan's pension or be included in the widow or widower's pension provided that they comply with the standard.

*Paragraph 2*

432. This paragraph is to be interpreted as a derogation from the methods of calculation referred to in the foregoing paragraph. It applies to universal systems. Parties which protect all resident survivors and do not make entitlement conditional on the completion of any qualifying period may calculate the benefit in accordance with the criteria laid down in Article 73. The benefits to surviving children may be paid in the form of increased family allowances or an orphan's pension, or be included in the widow or widower's pension, provided that they comply with the standard. Welfare or social assistance systems may be

taken into account for the purposes of complying with the obligations laid down in this paragraph where they accord the persons concerned a right to protection.

*Paragraph 3*

433. This paragraph is based on paragraphs 9 and 10 of ILO Recommendation No. 131.

434. The Parties have a duty to protect persons who do not meet the conditions of eligibility laid down in paragraphs 2 to 4 of Article 64.

435. This protection consists of cash resettlement allowances.

436. The rules governing the manner of completion of the qualifying period, the award of these allowances and the period for which they are paid are determined by national legislation.

437. The (revised) Code does not set any standard as to the amount of these allowances.

438. However, the Party concerned shall be deemed to comply with this provision if it has accepted the obligations provided for in Part IV (Unemployment benefit) and applies the provisions of Article 20, paragraph 3 (e).

*Paragraph 4*

439. Alongside cash benefits, the Parties must develop facilities for the settlement in employment of surviving spouses.

440. The conditions governing the application of this provision are determined by national legislation.

*Paragraph 5*

441. This paragraph applies to survivors' benefit schemes in which the benefit paid depends on the length of the insurance period. This text offers three alternative provisions for determining the benefit which should be guaranteed to protected persons at the fixed rate shown in the table appended to Part XI (Calculation of periodical payments).

442. The first possibility, set out in sub-paragraph (a), states that when the contingency arises, the benefit for survivors established in paragraph 1 of Article 66 must be guaranteed to protected persons whose breadwinner has completed a period of fifteen years of contributions, occupational activity or residence. When the scheme covers all surviving spouses and children who are resident, and if the breadwinner was not him or herself resident (cf. the first condition of the possibility of sub-paragraph (c) of paragraph 1 of Article 65, set out under paragraph 428), the surviving spouse may be made subject to a prescribed period of residence which may exceed 15 years. This condition may not be imposed on surviving children.

443. The second possibility, set out in sub-paragraph (b), allows Parties to take into account a period of thirty years (instead of fifteen years) of contributions, occupational activity or residence, on condition that in calculating the benefit, the legislation which makes use of this sub-paragraph takes account of the period, based on notional periods, between the occurrence of the risk and a specific age as determined by national legislation. This second possibility concerns both schemes which protect the survivors of economically active persons and those which protect resident survivors or the survivors of residents.

444. The third possibility, set out in sub-paragraph (c), concerns exclusively systems protecting the survivors of economically active persons. This sub-paragraph provides for a benefit to be granted to protected persons whose breadwinner had completed a maximum period of three years of contributions, but on condition that during his or her working life he or she fulfilled the insurance requirements prescribed by the national legislation.

*Paragraph 6*

445. Reduced benefit shall be awarded to protected persons whose breadwinner has not fulfilled the conditions laid down in sub-paragraphs (a), (b) or (c) of paragraph 5 of the article but has fulfilled the condition in respect of a qualifying period prescribed in paragraph 1 of Article 67. If a qualifying period is not a condition, protected persons shall also be paid reduced benefits.

446. Benefits referred to in this paragraph may be reduced in proportion to the length of the contribution period, occupational activity or residence completed in accordance with national legislation.

*Paragraph 7*

447. This paragraph concerns survivors' benefit schemes which grant benefits whose amount is independent of the length of the insurance period. This is a distinct provision unconnected to that set out in paragraph 5; the latter referring to invalidity insurance schemes under which the benefits depend on the length of the insurance period.

448. The benefit in question may amount to a percentage of 10 units less than that shown in the table appended to Part XI (Calculation of periodical payments). It must be guaranteed to all protected persons whose breadwinner had completed a qualifying period not exceeding 12 months.

449. The conditions governing the completion of the qualifying period are determined by national legislation.

**Article 67**

*Conditions of entitlement to benefit*

*Paragraph 1*

450. This paragraph enables Parties to require that a qualifying period be completed before survivors' benefit is paid. The qualifying period which can be imposed under the provisions of this paragraph may not exceed five years. It must be made clear that it is the breadwinner who must have completed the qualifying period laid down in this paragraph.

*Paragraph 2*

451. The aim of this paragraph is to permit national legislations to provide for a qualifying period of more than five years for persons entering the insurance system at a more advanced age because the probability of the contingency occurring is greater.

**Article 68**

*Duration of payment of benefit*

452. Except in the cases enumerated in Article 74, the benefits provided for in Article 66, paragraphs 1, 2, 5, 6 and 7 must be paid throughout the contingency or until their

replacement by invalidity or old-age benefit. The amount of these substitute payments may be lower than the amount of survivors' benefits, as there is no principle of equivalence in the (revised) Code. It may even, in an extreme case, be theoretical. If, for example, the substitute payments are invalidity benefits and are calculated in accordance with Article 73, they may be nil. Similarly, where, for example, old-age benefits are substituted for survivors' benefit, the Party in question must comply with the standard for Part V (Old-age benefit), provided it has ratified that Part.

#### **Article 69**

##### *Cessation of payment of benefit*

453. If no age requirement has been imposed for the award of benefit to a surviving spouse because he is unfit for work or has at least one dependent child, benefit may cease to be paid if the beneficiary overcomes the handicap or no longer has a dependent child.

#### **Article 70**

##### *Transitional clause*

454. This article authorises a temporary derogation from the provisions of this Part without any compensatory measures being required. If use is made of this derogation, the report to the supervisory authorities shall indicate, throughout the period in which the derogation is made, the state of national legislation and practice, and the progress achieved since the previous report.

### **Part XI – Calculation of periodical payments**

455. The (revised) Code fixes the level which the main periodical cash benefits must reach in order to secure means of subsistence considered adequate to the persons protected once the contingency covered has arisen.

456. The methods of calculation adopted are based either on the previous earnings of the beneficiary or of the family breadwinner, or on the minimum legal or inter-occupational wage or wage of an ordinary labourer, or on a national scale and on the means of the beneficiary and his/her family. The table appended to this Part also lays down the percentages of these amounts that the periodical payments must represent.

457. Calculation of family benefit is an exception to these methods; its total value being appraised according to the criteria laid down in Article 49.

458. Articles 71 and 72 provide two methods of calculation; the Parties are free to choose at any one moment which of the two methods of calculation they will apply, irrespectively of the method for calculating benefit prescribed by their legislation;

- Article 71 applies to social security systems which award cash benefit calculated as a proportion of the previous earnings of the beneficiary or the family breadwinner;

- Article 72 applies to social security systems which award cash benefit at a flat rate.

459. Article 73 applies to social security systems which pay cash benefits according to a prescribed scale and to the means of the beneficiary and his/her family. In addition, methods of calculation laid down in this article may be applied only in the cases expressly provided for in the (revised) Code, namely, when a Party satisfies the conditions set out in Articles 21, paragraph 3; 60, paragraphs 2 and 3; and 66, paragraph 2. Lastly, this method of calculation is never compulsory; it simply provides an opportunity for departing from criteria laid down in Articles 71 and 72.

460. It should be pointed out that for the benefits provided for under Articles 18, paragraph 1, 25, paragraph 2, 29, paragraph 5, 39, paragraph 2, 60, paragraphs 4, 6 and 8, 62, subparagraph (c), 66, paragraphs 3 and 6, the (revised) Code does not set standards for the amount of benefits.

## **Article 71**

### *Periodical payments calculated as a proportion of previous earnings*

#### *Paragraph 1*

461. Paragraph 1 of Article 65 of the European Code of Social Security establishes the standards for determining the typical beneficiary. The wording adopted in the (revised) Code is more flexible, in that Parties can choose between a beneficiary considered alone and a beneficiary with dependants, which should facilitate ratification by the Council of Europe member States.

462. It concerns social security systems which pay cash benefit in proportion to the previous earnings of the beneficiary or of the beneficiary's breadwinner.

463. The periodical payments, together with any family benefits provided in the course of the contingency, must be at least equal to the amount corresponding to a certain percentage of the previous earnings of the beneficiary or the breadwinner together with any family benefits provided before the contingency arises. This percentage is established for each contingency and is shown in the table appended to this Part.

464. Previous earnings as referred to in paragraph 1 are determined by national legislation. The earnings in question are those used by national legislation to determine the amount of periodical payments. They could well be those received immediately before the contingency arises (in principle, this would be the case for short-term payments such as sickness benefit) or those received over a longer period, for example, earnings over the best or last ten years of the working life of the person concerned or even the average earnings throughout the person's working life (in principle, this will be the case for long-term benefits such as pensions).

465. Two standard beneficiaries are distinguished: (a) a beneficiary considered alone and (b) a beneficiary with dependants. Parties are free to choose either to establish that they satisfy the obligations of the (revised) Code.

#### *Sub-paragraph (a)*

466. If a Party chooses as the standard beneficiary a person considered alone, that is to say without family commitments, the amount of the periodical payment ranges, depending on the contingency, from 20% to 70% of the previous earnings of the beneficiary or the breadwinner.

#### *Sub-paragraph (b)*

467. The standard beneficiary with dependants allows account to be taken either of greater amounts of benefit received by the beneficiary in his capacity as breadwinner, or of family benefit or benefit payable in respect of dependants. The amount of the periodical payments ranges, depending on the contingency, from 65% to 80% of the previous earnings of the beneficiary or the breadwinner, including the amount of family benefit payable to persons with the same dependants as the standard beneficiary.

*Paragraph 2*

468. This paragraph is based on paragraph 2 of Article 65 of the European Code of Social Security.

469. The previous earnings of the beneficiary or breadwinner must be calculated according to the rules laid down by national legislation. Where people are divided into categories according to their earnings, the previous earnings may be worked out from the basic earnings of the category to which they belonged.

470. Basic earnings are those corresponding to the earnings scale or category used as the basis for calculating social contribution rates. This concept corresponds to certain social security systems where earnings' categories are used as the basis for calculating contribution rates for insured persons and amounts of benefit.

471. In the latter case, the amount of benefit corresponding to the basic earnings for each category of earnings must reach the percentage specified in the (revised) Code for each contingency concerned.

*Paragraph 3*

472. This paragraph is based on paragraph 3 of Article 65 of the European Code of Social Security, but it is no longer specified that the skilled manual worker must be male.

473. This paragraph is intended to take account of national legislation which places ceilings on the benefit or on the amount of earnings taken as a basis for calculating the benefit and stipulates to what extent these can validly be taken into consideration.

474. However, in the case of a beneficiary or breadwinner whose previous earnings are equal to, or less than, the wage of a skilled manual worker, the benefit must not be less than the sum corresponding to the percentage of the beneficiary's previous earnings, as prescribed by the (revised) Code.

Example:

Contingency: old age

Standard beneficiary: person considered alone

The Party's old-age pension is proportional to the previous earnings of the insured person, but with a ceiling. This ceiling is set at 35 000 units for the reference year. The Party avails itself of Article 71, paragraph 3.

The skilled manual worker taken into account earns an annual wage of 70 000 units.

Beneficiaries earning 40 000 units a year must obtain a benefit which represents at least 50% of their previous earnings. However, on account of the maximum pension, beneficiaries earning 100 000 units a year will not obtain a benefit equal to 50% of their previous earnings, in line with the wording of Article 71, paragraph 3.

*Paragraph 4*

475. This paragraph is based on paragraph 4 of Article 65 of the European Code of Social Security.

476. All the factors which determine the previous earnings of the beneficiary or the breadwinner, the skilled manual worker's wage, the periodical payment and the family benefit must correspond to the same unit of time for purposes of comparison between the reference earnings and the benefit paid.

*Paragraph 5*

477. This paragraph concerns Parties whose national legislation makes cash benefits subject to deduction of tax or social security contributions. In this case, the earnings to be taken into account must correspond to one of the two following cases:

*Sub-paragraph (a)*

- gross earnings before deduction of tax or contributions, to which shall be compared the gross periodical payments before deduction of tax or contribution, or

*Sub-paragraph (b)*

- net earnings after deduction of tax or contributions, to which shall be compared the net periodical payments after deduction of tax or contributions.

478. The cases described in sub-paragraphs (a) and (b) are alternatives. The Parties are free to choose one or the other in order to comply with the standard.

*Paragraph 6*

479. This paragraph concerns Parties whose national legislation exempts cash benefit from all tax or contributions. In this case, the earnings to be taken into account for calculating the amount of the benefit may be the net earnings after deduction of tax or contributions.

*Paragraph 7*

480. This paragraph is based on paragraph 6 of Article 65 of the European Code of Social Security.

481. This paragraph defines what is to be understood by the "skilled manual worker" whose wage is taken into account for the application of paragraph 3 of this article.

482. It is for each Party to choose from these three definitions the one which best matches the statistics available in order to show that its legislation fully applies the Parts of the (revised) Code it has accepted.

*Paragraph 8*

483. This paragraph is based on paragraph 7 of Article 65 of the European Code of Social Security, but it is no longer specified that the skilled manual worker must belong to the branch of economic activities and to the category with the largest number of male persons protected.

484. Where a Party applies sub-paragraph (b) of paragraph 7 of this article, it must choose the skilled manual worker in the category comprising the largest number of protected persons (or breadwinners of protected persons, in the case of death of breadwinner) in the branch of economic activity with the largest number of such persons. In order to ensure a certain amount of uniformity, the branch of economic activity chosen, and the category chosen within this branch must be part of the International Standard Industrial Classification of all economic activities which was adopted by the Economic and Social Council of the United Nations in

1948 and reproduced as an appendix in its revised format of 1968. The 1990 revision of this classification is reproduced as an Appendix to the present explanatory report.

*Paragraph 9*

485. This paragraph is based on paragraph 8 of Article 65 of the European Code of Social Security.

*Paragraph 10*

486. This paragraph is based on paragraph 9 of Article 65 of the European Code of Social Security.

487. The normal number of hours of work corresponding to a full-time job which serves as a basis for calculating the skilled manual worker's wage is determined by:

- collective agreements, or
- national legislation, or
- custom.

488. In all cases, the wage so determined must include any cost-of-living allowances.

489. Where the wage of a skilled manual worker varies from one region to another on the territory of a Party and the latter does not apply the provisions of the paragraph 9, uniform benefits for the whole of the national territory will be determined by taking account of the median wage for the purpose of verifying whether the Party in question complies with the standards of the table appended to this Part.

490. The median wage, according to the generally accepted definition, is obtained by placing the various regional wages in order of increasing value. When the number of wages is odd, the middle value is taken. When the number of wages is even, the figure considered is the arithmetic mean of the two middle wages.

Examples : Regional wages

1st example: an odd number of regional wages:

<u>Classification in increasing order</u>			
Wage of region	A – 1,000	Region	C - 980
" "	B – 1,250	" "	A- 1,000
" "	C - 980	" "	B- 1,250 : median wage
" "	D – 1,400	" "	E- 1,300
" "	E – 1,300	" "	D- 1,400

2nd example : an even number of regional wages:

Classification in increasing order

Wage of region	A – 1,000	Region	C - 980
" "	B – 1,250	" "	A- 1,000
" "	C - 980	" "	1,100      1,100
" "	D – 1,400	" "	B- 1,250 + 1,250
" "	E – 1,300	" "	E- 1,300 $2,350:2 = 1,175$
" "	F – 1,100	" "	D- 1,400

Median wage : 1,175

*Paragraph 11*

491. The principle laid down in this paragraph has no equivalent in the European Code of Social Security.

492. This paragraph establishes the principle of adjustment of the reference earnings taken into account in calculating periodical payments to be made in respect of invalidity, old age or the death of the breadwinner.

493. The amount of the previous earnings of claimants or their breadwinners to be taken into account for the calculation of invalidity, old-age or survivors' benefit must be reviewed following appreciable changes in the general level of earnings and/or in the cost of living.

494. National legislation shall determine the procedure for applying this provision.

*Paragraph 12*

495. This paragraph is based on paragraph 10 of Article 65 of the European Code of Social Security.

496. This paragraph establishes the principle of periodic adjustment of current benefits for invalidity, old-age and survivors, as well as for permanent invalidity or survivors' benefits as laid down in sub-paragraphs (c) and (d) of paragraph 1 of Article 32.

497. These benefits shall be reviewed following appreciable changes in the general level of earnings and/or in the cost of living.

498. National legislation shall determine the procedure for applying this provision.

**Article 72**

*Periodical payments fixed at a uniform rate*

*Paragraph 1*

499. This paragraph is based on paragraph 1 of Article 66 of the European Code of Social Security, but it is no longer specified that the skilled manual worker must be male.

500. It concerns social security systems which pay cash benefits at a uniform rate. During the contingency, the periodical payments together with any family benefit paid, must be at least equal to a certain percentage of the wage of an ordinary labourer or the minimum legal or interoccupational wage together with any family benefit paid, before the contingency occurs. This percentage is established for each contingency and appears in the table appended to

this Part. The formula can also be applied to systems providing for benefit proportional or partially proportional to the previous earnings of the beneficiary or the beneficiary's but the benefit may in no case be lower than a minimum amount complying with the article's provisions.

501. Two standard beneficiaries are distinguished: a beneficiary considered alone (a), and a beneficiary with dependants (b). Parties are free to choose either to establish that they satisfy the requirements of the (revised) Code.

*Sub-paragraph (a)*

502. If a Party chooses as the standard beneficiary a person considered alone, that is to say without family commitments, the amount of the periodical payments ranges, depending on the contingency, from 20% to 70% of the minimum legal or inter-occupational wage or of the wage of an ordinary labourer.

*Sub-paragraph (b)*

503. The standard beneficiary with dependants allows account to be taken either of greater amounts of benefit received by the beneficiary in his capacity as breadwinner or of family benefit or benefit payable in respect of dependants. The amount of the periodical payments ranges, depending on the contingency, from 65% to 80% of the minimum legal or interoccupational wage or of the wage of an ordinary labourer, including the amount of family benefit payable to persons with the same dependants as the standard beneficiary.

*Paragraph 2*

504. This paragraph is based on paragraph 2 of Article 66 of the European Code of Social Security.

505. All the factors which determine the minimum wage, the ordinary labourer's wage, the periodical payment and the family benefit, must correspond to the same unit of time for purposes of comparison between the reference earnings and the benefit paid.

*Paragraph 3*

506. This paragraph concerns national legislation where cash benefits are subject to tax or social security contributions; in such a case, the minimum wage or the wages of an ordinary labourer to be taken into account must correspond to one of the two following cases :

*Sub-paragraph (a)*

- the gross wages before deduction of tax or contributions, to which shall be compared the gross periodical payment before deduction of tax or contributions; or

*Sub-paragraph (b)*

- net earnings after deduction of tax or contributions, to which shall be compared the periodical payment before deduction of tax and contributions.

507. The cases contained in sub-paragraphs (a) and (b) are alternatives and Parties are free to choose one or the other in order to comply with the standard.

*Paragraph 4*

508. This paragraph concerns Parties whose national legislation exempts cash benefit from all tax or contributions. In this case, the minimum wage or the wages of an ordinary labourer to be taken into account for calculating the amount of the benefit may be the net wage after deduction of tax or contributions.

*Paragraph 5*

509. This paragraph is based on paragraph 4 of Article 66 of the European Code of Social Security.

510. This paragraph defines what is meant by the "ordinary labourer" whose wage is the reference for determining the minimum amount of benefit to be paid in accordance with Article 72.

511. It is for each Party to choose which of these two definitions best matches the statistics available in order to show that its legislation applies fully the Parts of the (revised) code it has accepted.

*Paragraph 6*

512. This paragraph is based on paragraph 5 of Article 66 of the European Code of Social Security, but it is no longer specified that the skilled manual worker must belong to the group of economic activities and the category with the largest number of male persons protected.

513. The skilled manual worker must be chosen in the category comprising the largest number of protected persons (or breadwinners of protected persons, in the case of death of breadwinner) in the branch of economic activity with the largest number of such persons. In order to ensure a certain amount of uniformity, the branch of economic activity chosen, and the category chosen within this branch must be part of the International Standard Industrial Classification of all economic activities which was adopted by the Economic and Social Council of the United Nations in 1948 and reproduced as an appendix in its revised format of 1968. The 1990 revision of this classification is reproduced as an Appendix to the present explanatory report.

*Paragraph 7*

514. This paragraph is based on paragraph 6 of Article 66 of the European Code of Social Security.

*Paragraph 8*

515. This paragraph is based on paragraph 7 of Article 66 of the European Code of Social Security.

516. The normal hours of work corresponding to a full-time job which serves as a basis for calculating the ordinary labourer's wage is determined by:

- collective agreements, or
- national legislation, or
- custom.

517. In all cases, the wage so determined must include any cost of living allowances.

518. Where the wage of an ordinary labourer or the minimum wage varies from one region to another on the territory of a Party and the latter does not apply the provisions of the previous paragraph, uniform benefits for the whole of the national territory will be determined by taking account of the median wage for the purpose of verifying whether the Party in question complies with the standards of the table appended to this Part.

*Paragraph 9*

519. This paragraph is new and concerns periodical payments in the case of part-time work. In such cases, the benefit, at the percentage laid down by the standard, may be reduced according to the length of time actually worked.

*Paragraph 10*

520. This paragraph is based on paragraph 8 of Article 66 of the European Code of Social Security and Article 29 of ILO Convention No. 128.

521. This paragraph establishes the principle of periodical adjustment of current benefits for invalidity, old-age and survivors, as well as for permanent invalidity or survivors' benefits, as laid down in sub-paragraphs (c) and (d) of paragraph 1 of Article 32.

522. These benefits shall be reviewed following appreciable changes in the general level of earnings and/or in the cost of living.

523. National legislation shall determine measures for applying this provision.

**Article 73**

*Payments made according to the beneficiary's means*

524. This article is based on Article 67 of the European Code of Social Security.

525. This article applies where the legislation of a Party makes the award of benefit subject to a means test.

526. Application of this article is dependent on certain conditions. Thus the amount of benefit must be determined using a scale set by national legislation. Services responsible for awarding this type of benefit should not have discretionary power when determining the amount. Beneficiaries must have an objectively established right to these benefits from the moment they meet the requirements, as set by national legislation.

527. This article may be applied by the Parties only in the cases expressly provided for in the (revised) Code, namely in Articles 21, paragraph 3; 60, paragraphs 2 and 3; and 66, paragraph 2.

528. The amount of benefit awarded must be determined in such a way that, together with other means of beneficiaries and their families, the level reached is at least that which the said benefit would have reached if calculated in accordance with Article 72.

529. The amount of the periodical payment may be equal to zero when the other means of beneficiaries and their families are equal to, or exceed, the amount of the periodical payment calculated in accordance with Article 72.

530. National legislation shall determine what is to be understood by "means of beneficiaries and their families".

Table appended to this Part

531. This table differs from that appended to Part XI of the European Code of Social Security in two respects. First, it provides for two standard beneficiaries, according to whether or not there are dependants, and Parties are free to refer to either. Second, the expressions such as "man with wife" and "widow" have been rejected in favour of "person with spouse" and "surviving spouse". The (revised) Code accordingly adopts a neutral terminology and endeavours to encourage Parties to promote sexual equality.

## **Part XII – Common provisions**

### **Article 74**

*Cases when benefit may be withheld, withdrawn or suspended*

#### *Paragraph 1*

532. This paragraph is based on Article 68 of the European Code of Social Security and Article 69 of ILO Convention No. 102.

533. Although Article 68 of the European Code of Social Security refers to the suspension of benefits only, the supervisory bodies of this instrument have interpreted this provision as also providing for the withholding and withdrawal of benefits. By specifically stating that the measures which may wholly or partly deprive the person concerned of the prescribed benefit include the withholding and withdrawal of benefits, the (revised) Code has become more precise.

534. This article allows the Parties to withhold, withdraw or suspend any benefit which a protected person might claim under any of Parts II to X of the (revised) Code if one of the situations provided for arises.

535. The term "to a prescribed extent" allows national legislation to provide for the reduction of benefits for example, instead of their complete withdrawal.

536. Since the list is a limitative enumeration of withholding, withdrawal or suspension cases, the Parties may not provide for other cases in their national legislation.

#### *Sub-paragraph (a)*

537. Where the contingency has been caused by a criminal offence committed by the person concerned, the benefit to which that person would otherwise be entitled may be withheld, withdrawn or suspended.

538. The act justifying these measures must constitute a criminal offence adjudged to be such by national law.

#### *Sub-paragraph (b)*

539. Where the contingency has been caused by an act constituting wilful misconduct according to national legislation, benefits to which that person would have been entitled may be withheld, withdrawn or suspended.

*Sub-paragraph (c)*

540. Where the institution has established that the person concerned has obtained or sought to obtain the benefit concerned by means of a fraudulent claim, it may be withheld, withdrawn or suspended.

*Sub-paragraph (d)*

541. Where the person concerned neglects, without valid reason, to make use of the medical care or rehabilitation services available, the benefit provided to which that person would otherwise be entitled may be withheld, withdrawn or suspended.

542. If the person concerned refuses to comply with the rules laid down by national legislation for verification of the existence of the contingency in respect of which the benefit is paid, or does not act in a way appropriate to the situation of a beneficiary, benefit may be withheld, withdrawn or suspended.

*Sub-paragraph (e)*

543. Unemployment benefit may be withheld, withdrawn or suspended where:

- the person concerned had discontinued working in order to take part in a labour dispute, for as long as the dispute lasts;
- the person concerned is prevented from working or has lost his job as a direct result of such a dispute;
- the person concerned has left work voluntarily without just cause;
- the person concerned fails to make use of the employment services at his disposal and refuses, for instance, to take a suitable job when it is offered.

In the first three points, national legislation shall determine conditions in which the measures to withhold, withdraw or suspend benefits shall be applied.

*Sub-paragraph (f)*

544. The provision of benefit may be made conditional upon residence of the person concerned in the territory of the Party concerned; it is for this reason that the provision of benefits may be withheld, or suspended as long as the person concerned is absent from the territory in question without prejudice to contrary provisions in the various international co-ordination instruments by which the Party concerned is bound.

*Sub-paragraph (g)*

545. Where the person concerned is maintained at public expense, whatever the source, or at the expense of a social security institution or service, the benefits to which that person would otherwise be entitled may be withheld, withdrawn or suspended for as long as the person is maintained in such a manner.

*Sub-paragraph (h)*

546. This sub-paragraph is designed to prevent concurrent drawing of cash social security benefits.

547. Where the person concerned receives another social security cash benefit other than a family benefit, or while that person receives compensation from a third party, such as for example a private insurance company, a third party responsible for the damage, employer, etc., the benefit may be suspended. However, the part of the benefit which is suspended must not exceed the total of the other benefits or compensation paid by a third party.

548. Concurrent drawing of two categories of benefit may justify suspension of a benefit only if both categories are paid to the same beneficiary. Similarly, the Parties are not obliged to pay family benefits for a family member who is entitled to such benefits paid by a third party.

549. A person who is not receiving any other benefit or compensation as a result of personal fault or negligence may nevertheless be deemed to be the beneficiary of this benefit or compensation.

*Sub-paragraph (i)*

550. Survivors' benefit may be withheld or suspended if the surviving spouse who would be entitled to such benefit cohabits, for as long as he/she cohabits. The payment of benefit must start when the surviving spouse ceases to cohabit.

551. The definition of "cohabit" is determined by national legislation.

552. Survivor's benefit payable to the surviving child may not be withheld or suspended on the grounds that the surviving parent is cohabiting.

*Sub-paragraph (j)*

553. This sub-paragraph is based on Article 31, paragraph 1 of ILO Convention No. 128. If the beneficiary engages in gainful activity at the same time as receiving invalidity, old-age or survivors' benefit, this may justify withholding, withdrawing or suspending the benefit concerned.

*Sub-paragraph (k)*

554. This sub-paragraph has no equivalent in the European Code of Social Security.

555. It is only concerned with insurance systems which pay benefits without requiring completion of a qualifying period. In this case, the Parties may adopt provisions which, for example, allow for withholding the right to benefit when the contingency already existed at the time the person concerned became covered by the insurance or when the contingency was foreseeable at that time.

*Paragraph 2*

556. This paragraph is intended to protect the beneficiary's dependants from the effects of withholding, withdrawal or suspension of benefit provided for.

557. Within the cases, conditions and limits prescribed by national legislation, reduced benefits must be paid to the dependants, unless they enjoy some other form of adequate protection, such as the receipt of social assistance benefits.

558. The measures for application of this provision will be determined by national legislation.

## **Article 75**

### *Right of appeal*

#### *Paragraph 1*

559. This article is based on Article 69 of the European Code of Social Security.

560. This article is general in scope and applies to all benefits provided for. It establishes a principle guaranteeing that any claimant may bring an appeal to the competent jurisdiction against any decision of a social security institution concerning the withholding, withdrawal or suspension of benefit, or if the nature or amount of such benefits is in dispute.

561. The right to bring a case before the competent court is, in principle, free according to the conditions laid down in national legislation, unless the possibility exists of prior free appeal to a competent body.

#### *Paragraph 2*

562. National legislation must recognise the beneficiaries' right to be represented or assisted by any qualified person of their choice, e.g. a lawyer or delegate of an organisation representing the persons protected (trade union, association of insured persons, etc).

## **Article 76**

### *Financing of social security schemes and guarantee of payment of benefits*

#### *Paragraph 1*

563. This paragraph is more flexible than paragraphs 1 and 2 of Article 70 of the European Code of Social Security. It simply reminds Parties that they have an obligation to ensure that persons of modest means do not contribute too great a proportion of their income to the financing of social security schemes.

#### *Paragraph 2*

564. Each Party accepts general responsibility for guaranteeing the provision of benefits as set out in the (revised) Code. As has already been clarified in Article 3, paragraph 2 of the (revised) Code (see paragraph 74 of this explanatory report), the Party must adopt and implement all the provisions necessary in respect of this commitment and give guarantee that all the benefits set out are awarded regardless of the institution or body responsible for providing benefits.

## **Article 77**

### *Participation of protected persons in the management of social security institutions*

#### *Paragraph 1*

565. This paragraph is based on Article 71 of the European Code of Social Security.

566. If management of the various branches provided for in the (revised) Code is not the responsibility of a public service accountable to an elected assembly, protected persons must be represented on the administrative bodies of the social security institutions or associated with them, in an advisory capacity.

567. This participation or association procedure is determined by national legislation.

568. The (revised) Code provides for the possibility of extending participation to representatives of employers and public authorities. Here too, it is for national legislation to determine the participation procedure.

*Paragraph 2*

569. This paragraph constitutes a derogation from the obligations arising in paragraph 1 and is applicable only where there is non-compulsory insurance supervised by the public authorities in accordance with Article 6, sub-paragraph (a). Only in this case does the system of consultation or of participation of protected persons in the management of the administrative bodies not have binding force for the Parties.

*Paragraph 3*

570. Each Party accepts general responsibility for the efficient and good administrative and financial management of the public or private social security institutions. It is for national legislation to determine measures for monitoring and supervising the administrative bodies.

**Part XIII – Miscellaneous provisions**

**Article 78**

*Principle of the non-retroactivity of the (revised) Code*

571. Sub-paragraph (b) of Article 72 of the European Code of Social Security extends the effects of the principle of non-retroactivity to benefits awarded for contingencies arising after the entry into force of the relevant part of the Code, if these benefits are payable in respect of periods of insurance prior to the date of entry into force. This provision was considered to be quite stringent in that it could cause considerable delay in the effectiveness of the European Code of Social Security for certain long-term benefits. Thus it was not maintained in the text of the (revised) Code.

572. Accordingly, benefit should be paid in accordance with the provisions of the (revised) Code every time that the contingency arises after the entry into force of the relevant part of the (revised) Code, irrespectively of when the periods of contribution, occupational activity or residence were completed.

**Article 79**

*Procedure for monitoring the application of the (revised) Code*

573. This article is based on Article 74 of the European Code of Social Security.

574. This article establishes the procedure for monitoring the application of the (revised) Code by the Parties.

*Paragraph 1*

575. This paragraph is simpler than the corresponding one in the European Code of Social Security. Within the first year after ratification, the Parties shall send the Secretary General of the Council of Europe full information concerning legislation governing the application of the parts of the (revised) Code specified in the instrument of ratification, acceptance, approval or accession. The report should also provide statistical proof, in accordance with the method and in the order proposed by the committee referred to in Article 1 (a), that the Party is fully

complying with the requirements of the (revised) Code. Information should in particular concern the number of persons protected, the amount of benefit and the period for which unemployment benefit is paid, as provided for in Article 24, paragraph 2.

576. All Parties shall submit a detailed report, as described above, once every four years. In the intervening years, all Parties shall submit interim reports on the most important modification to national legislation, including statistics.

577. Furthermore, and this is a new obligation which did not exist in the European Code of Social Security, Parties are expected to forward copies of the said detailed and interim reports to their most representative organisations of employers and workers for comments. Any comments from these organisations should be appended to the national reports.

*Paragraph 2*

578. When a Party in ratifying the (revised) Code has benefited from the flexible conditions provided for under Article 7, paragraph 2, its annual report must provide proof that the Party affords protection which is at least equivalent to that of the (revised) Code.

*Paragraph 3*

579. Furthermore, each Party is required to provide the Secretary General of the Council of Europe at his/her request with additional information on the way in which it applies the provisions covered by its ratification.

*Paragraph 4*

580. The Parties' reports on the application of those parts of the (revised) Code whose obligations they have accepted, together with any comments from the most representative national organisations of employers and workers and, if need be, supplementary information, will be examined by a European Commission of Independent Experts which will prepare conclusions for submission to the Committee.

*Paragraph 5*

581. The European Commission of Independent Experts will consist of not more than five members. However, the text of the (revised) Code permits this number to be less than five - during the preparation of the (revised) Code, its authors envisaged that on a temporary basis, the Commission could consist of three members until the entering into force of the (revised) Code with respect to the seventh Contracting State.

*Paragraph 11*

582. Finally, the national reports and supplementary information, as well as the observations by the most representative national organisations of employers and workers, and the conclusions of the European Commission of Independent Experts will be examined by the Committee referred to in Article 1 (a), which will itself draw up a report containing its own conclusions for submission to the Committee of Ministers of the Council of Europe.

*Paragraph 12*

583. The purpose of this paragraph is to divide between the European Economic Community and its member States the obligations concerning the submission of reports for the monitoring of the application of the (revised) Code.

## **Article 80**

### *Consultation of the Consultative Assembly of the Council of Europe*

584. Article 74, paragraph 3 of the European Code of Social Security contains a procedure for optional consultation of the Consultative Assembly. The (revised) Code reinforces the monitoring mechanisms by making it compulsory to consult the Consultative Assembly of the Council of Europe.

585. To this effect, the Secretary General of the Council of Europe must submit for opinion all the above-mentioned documents to the Consultative Assembly of the Council of Europe.

## **Article 81**

### *Compliance with the obligations accepted by the Parties*

#### *Paragraph 1*

586. On the basis of all the above-mentioned documents, including the opinion of the Consultative Assembly, the Committee of Ministers must decide by a two-thirds' majority whether each Party has complied with the obligations it has accepted under the (revised) Code.

#### *Paragraph 2*

587. If the Committee of Ministers of the Council of Europe considers that a Party does not meet its obligations, that Party will be invited to take the measures considered necessary by the Committee of Ministers to ensure compliance with its obligations.

588. If a Party does not submit the report mentioned in Article 79 within the time limit set, it will be invited by the Committee of Ministers to submit the report in question.

## **Article 82**

### *Reports on the Parts of the (revised) Code which have not been accepted*

589. The purpose of this article is to encourage the ratification of those Parts of the (revised) Code which have not yet been accepted by the Parties. Every four years they must submit a report to the Secretary General of the Council of Europe on the state of their legislation and practice with regard to all Parts of the (revised) Code which have not been specified in their instruments of ratification, acceptance or approval, or in a subsequent notification pursuant to Article 4, paragraph 1. The European Commission of Independent Experts will be required to forward its conclusions on these reports to the Secretary General.

## **Part XIV – Amendments**

### **Article 83**

#### *Procedure for revising the (revised) Code*

590. Amendments to the articles of the (revised) Code may be proposed by the Parties by the Committee of Ministers or by the Committee. They will be forwarded to all member States of the Council of Europe, to all Parties to the (revised) Code and to any State invited to accede to the (revised) Code. The Committee will submit its opinion to the Committee of Ministers, which may adopt the amendment. In order to take effect, amendments must be accepted by all the Parties to the (revised) Code.

## **Part XV – Final provisions**

### **Article 84**

#### *Procedure for ratification and entry into force of the (revised) Code*

##### *Paragraph 1*

591. The (revised) Code will be open to signature by member States of the Council of Europe once it has been adopted by the Committee of Ministers of the Council of Europe. By signing the (revised) Code, States undertake not to deprive this treaty of its aim and purpose before its entry into force, but only by depositing the instruments of ratification, acceptance, approval or accession do States undertake to apply the parts of the (revised) Code which they have accepted and to submit themselves to the international supervisory procedure provided for.

##### *Paragraph 2*

592. The European Code of Social Security came into force one year after the deposit of the third instrument of ratification. The (revised) Code will come into force on the first day of the month which follows the expiry of a twelve month period after the date on which the second instrument of ratification, acceptance, approval or accession is deposited.

##### *Paragraph 3*

593. In the case of States which have expressed their willingness to be bound by the (revised) Code after the deposit of the second instrument of ratification, acceptance, approval or accession, the (revised) Code shall not be effective until the first day of the month which follows the expiry of a twelve month period following the date of their ratification, acceptance, approval or accession.

### **Article 85**

#### *Accession by non-member countries and by the European Economic Community*

594. In the same way as the European Code of social security, the (revised) Code may, at the invitation of the Committee of Ministers of the Council of Europe, be acceded to by States which are not members of the Council. Furthermore, the Committee of Ministers may invite the European Economic Community to accede to the present (revised) Code. Article 20.d of the Statute of the Council of Europe means a two third majority and both this majority and a favourable unanimous vote of the representatives of the Contracting States entitled to sit on the Committee is required.

### **Article 86**

#### *Territorial scope*

##### *Paragraph 1*

595. Article 80 of the European Code of Social Security lays down that, except where the Contracting Party has made a contrary declaration to the Secretary General of the Council of Europe at the time of signature or of deposit of the instrument of ratification or accession, the European Code of Social Security applies to the metropolitan territory of each Contracting Party.

596. The (revised) Code does not contain such a precise stipulation. States are not obliged to state either when they sign or when they deposit the instrument of ratification, acceptance, approval or accession the territory or territories to which the (revised) Code shall apply.

597. In the absence of a definition of the territory concerned, it may be considered that the (revised) Code applies to the whole of the national territory of the Party concerned, unless a different intention appears from the (revised) Code or is otherwise established.

*Paragraph 2*

598. This paragraph allows the Parties who do not apply the accepted Parts of the (revised) Code to the whole of their national territory to extend the territorial scope to any other part of the territory named in a subsequent declaration addressed to the Secretary General of the Council of Europe.

*Paragraph 3*

599. Any Party which under the two previous paragraphs shall have made one or more declarations specifying the territorial scope of the (revised) Code may, in accordance with Article 88, withdraw its declarations and thus exclude the territories concerned from the application of the (revised) Code.

**Article 87**

*Prohibition of reservations*

600. The European Code of Social Security does not contain any provision giving the Contracting States the possibility of appending to their ratification or accession reservations that limit the scope of the standards laid down by the Code or enable them to be applied in a restrictive manner. Nor does it contain any provision prohibiting the formulation of reservations at the time of ratification.

601. The wording of the (revised) Code expressly excludes the possibility of introducing reservations on acceptance of the relevant Parts of the (revised) Code at the time of ratification.

**Article 88**

*Denunciation procedure*

*Paragraph 1*

602. Any Party may denounce the whole of the (revised) Code or any one or more of Parts II to X at the end of a period of four years after its entry into force for the Party concerned, or at the end of any successive period of five years. In practice, this means that if the (revised) Code enters into force for a given State on 1 January 2000, the State in question is bound by its provisions until 31 December 2003. If the State does not want its accession to the (revised) Code to continue for a further five-year period, i.e. until 31 December 2008, it must give notice of denunciation by 31 December 2002 at the latest.

603. If by denouncing one or more of Parts II to X a Party no longer satisfies the minimum conditions for ratification, acceptance, approval or accession laid down in Article 2, its denunciation shall be treated as a denunciation of the whole of the (revised) Code.

*Paragraph 2*

604. Denunciation of the (revised) Code by a Party does not in any way affect the Code's validity with regard to the other Parties, unless this denunciation brings the number of ratifications necessary for its continuation in force below the level laid down in Article 84, paragraph 2, in which case it shall cease to be in force.

**Article 89**

*Notification procedure*

605. The word "act" mentioned in sub-paragraph (f) of this article should be interpreted in its widest sense. It is a generic term designed to cover all cases where information communicated does not constitute a formal notification as it does in the cases provided for in sub-paragraphs (a) to (e) of this article.

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**Appendix I**

**List of international instruments referred to in the Explanatory report of the (revised) European Code of Social Security**

**Council of Europe**

Committee of Ministers

Resolution (54) 13: European Code of Social Security (Level of social security to be laid down).

Resolution (76) 3 on committee structures, terms of reference and working methods.

Resolution (76) 32 on social security measures to be taken in favour of pensioners and persons remaining in activity after pensionable age.

Parliamentary Assembly

Recommendation 28 with a view to the creation of a European Code of Social Security, adopted 24 August 1950, at the conclusion of the Debate on the Report from the Committee on Social Questions.

Recommendation 873 (1979) on the application and revision of the European Code of Social Security and its Protocol.

**International Labour Organisation**

Convention No. 44 ensuring benefit or allowances to the involuntarily unemployed.

Convention No. 102 concerning minimum standards of social security.

Convention No. 121 concerning benefits in the case of employment injury.

Convention No. 128 concerning invalidity, old-age and survivors' benefits.

Convention No. 130 concerning medical care and sickness benefits.

Recommendation No. 44 concerning unemployment insurance and various forms of relief for the unemployed.

Recommendation No. 131 concerning invalidity, old-age and survivors' benefits.

Recommendation No. 134 concerning medical care and sickness benefits.

Recommendation No. 162 concerning older workers.

Recommendation No. 168 concerning Employment Promotion and Protection against Unemployment.

### **Commission of the European Economic Community**

Recommendation concerning the adoption of a European list of occupational diseases of 23 July 1962.

### **United Nations**

Vienna Convention on the Law of Treaties (1969).

International standard industrial classification of all economic activities, revised by the Economic and Social Council of the United Nations in 1968.

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## **Appendix II**

### **Provisions from the ILO instruments referred to by the Explanatory report**

#### **Article 1, paragraph f of the (revised) Code / Paragraph 55 of the Explanatory Report**

ILO Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits

##### *Article 1, paragraph e*

e) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;

ILO Convention No. 130 concerning Medical Care and Sickness Benefits

##### *Article 1, paragraph e*

e) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;

ILO Convention No. 121 concerning Benefits in the Case of Employment Injury

##### *Article 1, paragraph d*

d) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;

**Article 1, paragraph h of the (revised) Code / Paragraph 58 of the Explanatory Report**

ILO Convention No. 121

*Article 1, paragraph e*

e) the term "dependent child" covers—

(i) a child under school-leaving age or under 15 years of age, whichever is the higher, and

(ii) a child under a prescribed age higher than that specified in subclause (i) and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, on conditions laid down by national legislation: Provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in subclause (i).

ILO Convention No. 128

*Article 1, paragraph h*

h) the term "child" covers—

(i) a child under school-leaving age or under 15 years of age, whichever is the higher; and

(ii) a child under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions: Provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph;

ILO Convention No. 130

*Article 1, paragraph g*

g) the term "child" covers—

(i) a child under school-leaving age or under 15 years of age, whichever is the higher: Provided that a Member which has made a declaration under Article 2 may, while such declaration is in force, apply the Convention as if the term covered a child under school-leaving age or under 15 years of age; and

(ii) a child under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions: Provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph;

**Article 3 of the (revised) Code / Paragraph 67 of the Explanatory Report**

ILO Convention No. 102 concerning Minimum Standards of Social Security

*Article 2*

Each Member for which this Convention is in force—

(a) shall comply with—

(i) Part I;

(ii) at least three of Parts II, III, IV, V, VI, VII, VIII, IX and X, including at least one of Parts IV, V, VI, IX and X;

(iii) the relevant provisions of Parts XI, XII and XIII; and

(iv) Part XIV; and

(b) shall specify in its ratification in respect of which of Parts II to X it accepts the obligations of the Convention.

ILO Convention No. 128

*Article 2*

1. Each Member for which this Convention is in force shall comply with—

(a) Part I;

(b) at least one of Parts II, III and IV;

(c) the relevant provisions of Parts V and VI; and

(d) Part VII.

2. Each Member shall specify in its ratification in respect of which of Parts II to IV it accepts the obligations of the Convention.

**Article 5 of the (revised) Code / Paragraph 77 of the Explanatory Report**

ILO Convention No. 121

*Article 29*

In conformity with Article 75 of the Social Security (Minimum Standards) Convention, 1952, Part VI of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention comes into force for that Member, but acceptance of the obligations of this Convention shall be deemed to constitute acceptance of the obligations of Part VI of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of Article 2 of the said Convention.

ILO Convention No. 128

*Article 45*

1. In conformity with the provisions of Article 75 of the Social Security (Minimum Standards) Convention, 1952, the following Parts of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention is binding on that Member and no declaration under Article 38 is in force:

- (a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;
- (b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;
- (c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

2. Acceptance of the obligations of this Convention shall, on condition that no declaration under Article 38 is in force, be deemed to constitute acceptance of the obligations of the following parts of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of Article 2 of the said Convention:

- (a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;
- (b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;
- (c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

ILO Convention No. 130

*Article 36*

1. In conformity with the provisions of Article 75 of the Social Security (Minimum Standards) Convention, 1952, Part III of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention is binding on that Member and no declaration under Article 3 is in force.

2. Acceptance of the obligations of this Convention shall, on condition that no declaration under Article 3 is in force, be deemed to constitute acceptance of the obligations of Part III of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of Article 2 of the said Convention.

**Article 7 of the (revised) Code / Paragraph 96 of the Explanatory Report**

ILO Convention No. 128

*Article 39*

1. Any Member which ratifies this Convention may, by a declaration accompanying its ratification, exclude from the application of the Convention—

- (a) seafarers, including sea fishermen,
- (b) public servants,

where these categories are protected by special schemes which provide in the aggregate benefits at least equivalent to those required by this Convention.

2. Where a declaration under paragraph 1 of this article is in force, the Member may exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 9; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 16; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 22; and subparagraph (c) of Article 37.

3. Any Member which has made a declaration under paragraph 1 of this article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of this Convention in respect of a category or categories excluded at the time of its ratification.

### **Article 9 of the (revised) Code / Paragraphs 107 and 111 of the Explanatory Report**

ILO Convention No. 130

#### *Article 10*

The persons protected in respect of the contingency referred to in subparagraph (a) of Article 7 shall comprise—

- (a) all employees, including apprentices, and the wives and children of such employees; or
- (b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population, and the wives and children of persons in the said classes;

### **Paragraph 114 of the Explanatory Report**

ILO Recommendation No. 134 concerning Medical Care and Sickness Benefits

#### *Paragraph 2(e)*

Members should extend the application of their legislation providing for the medical care referred to in Article 8 of the Medical Care and Sickness Benefits Convention, 1969, by stages, if necessary, and under appropriate conditions—

(...)

- (e) to all residents.

**Paragraph 116 of the Explanatory Report**

ILO Convention No. 130

*Article 12*

Persons who are in receipt of a social security benefit for invalidity, old age, death of the breadwinner or unemployment, and, where appropriate, the wives and children of such persons, shall continue to be protected, under prescribed conditions, in respect of the contingency referred to in subparagraph (a) of Article 7.

**Article 10 of the (revised) Code / Paragraph 119 of the Explanatory Report**

ILO Convention No. 121

*Article 10*

1. Medical care and allied benefits in respect of a morbid condition shall comprise—

- (a) general practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) dental care;
- (c) nursing care at home or in hospital or other medical institutions;
- (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- (e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses;
- (f) the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner; and
- (g) the following treatment at the place of work, wherever possible:
  - (i) emergency treatment of persons sustaining a serious accident;
  - (ii) follow-up treatment of those whose injury is slight and does not entail discontinuance of work.

ILO Convention No. 130

*Article 13*

The medical care referred to in Article 8 shall comprise at least—

- (a) general practitioner care, including domiciliary visiting;
- (b) specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;

- (c) the necessary pharmaceutical supplies on prescription by medical or other qualified practitioners;
- (d) hospitalisation where necessary;
- (e) dental care, as prescribed; and
- (f) medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances, as prescribed.

**Paragraph 132 of the Explanatory Report**

ILO Convention No. 130

*Article 17*

Where the legislation of a Member requires the beneficiary or his breadwinner to share in the cost of the medical care referred to in Article 8, the rules concerning such cost sharing shall be so designed as to avoid hardship and not to prejudice the effectiveness of medical and social protection.

**Article 12 of the (revised) Code / Paragraphs 141 and 143 of the Explanatory Report**

ILO Convention No. 130

*Article 16*

1. The medical care referred to in Article 8 shall be provided throughout the contingency.
2. Where a beneficiary ceases to belong to the categories of persons protected, further entitlement to medical care for a case of sickness which started while he belonged to the said categories may be limited to a prescribed period which shall not be less than 26 weeks: Provided that the medical care shall not cease while the beneficiary continues to receive a sickness benefit.

**Article 14 of the (revised) Code / Paragraphs 147 and 149 of the Explanatory Report**

ILO Convention No. 130

*Article 19*

The persons protected in respect of the contingency specified in subparagraph (b) of Article 7 shall comprise—

- (a) all employees, including apprentices; or
- (b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population.

**Article 17 of the (revised) Code / Paragraph 155 of the Explanatory Report**

ILO Convention No. 130

*Article 26*

3. Where the legislation of a Member provides that sickness benefit is not payable for an initial period of suspension of earnings, such period shall not exceed three days.

**Article 18 of the (revised) Code / Paragraph 162 of the Explanatory Report**

ILO Convention No. 130

*Article 27*

1. In the case of the death of a person who was in receipt of, or qualified for, the sickness benefit referred to in Article 18, a funeral benefit shall, under prescribed conditions, be paid to his survivors, to any other dependants or to the person who has borne the expense of the funeral.

2. A member may derogate from the provision of paragraph 1 of this article where—

(a) it has accepted the obligations of Part IV of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967;

(b) it provides in its legislation for cash sickness benefit at a rate of not less than 80 per cent of the earnings of the persons protected; and

(c) the majority of persons protected are covered by voluntary insurance which is supervised by the public authorities and which provides a funeral grant.

**Article 19 of the (revised) Code / Paragraph 175 of the Explanatory Report**

ILO Convention No. 44 Ensuring Benefit of Allowances to the Involuntarily Unemployed

*Article 10*

1. A claimant may be disqualified for the receipt of benefit or of an allowance for an appropriate period if he refuses an offer of suitable employment. Employment shall not be deemed to be suitable—

(a) if acceptance of it would involve residence in a district in which suitable accommodation is not available;

(b) if the rate of wages offered is lower, or the other conditions of employment are less favourable:

(i) where the employment offered is employment in the claimant's usual occupation and in the district where he was last ordinarily employed, than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his usual occupation in that district or would have obtained if he had continued to be so employed;

(ii) in all other cases, than the standard generally observed at the time in the occupation and district in which the employment is offered;

(c) if the situation offered is vacant in consequence of a stoppage of work due to a trade dispute;

(d) if for any other reason, having regard to all the considerations involved including the personal circumstances of the claimant, its refusal by the claimant is not unreasonable.

2. A claimant may be disqualified for the receipt of benefit or of an allowance for an appropriate period—

(a) if he has lost his employment as a direct result of a stoppage of work due to a trade dispute;

(b) if he has lost his employment through his own misconduct or has left it voluntarily without just cause;

(c) if he has tried to obtain fraudulently any benefit or allowance; or

(d) if he fails to comply with the instructions of a public employment exchange or other competent authority with regard to applying for employment, or if it is proved by the competent authority that he has failed or neglected to avail himself of a reasonable opportunity of suitable employment.

3. A claimant who on leaving his employment has received from his employer in virtue of his contract of service compensation for and substantially equal to his loss of earnings for a certain period may be disqualified for the duration of that period for the receipt of benefit or of an allowance. A discharge allowance provided for by national laws or regulations shall not be deemed to be such compensation.

#### **Article 25 of the (revised) Code / Paragraph 202 of the Explanatory Report**

ILO Recommendation No. 44 concerning Unemployment Insurance and Various Forms of relief for the Unemployed

##### *Paragraph 12*

Part of the money allocated to the relief of unemployment should be available for the purpose of facilitating the return of unemployed persons to employment, such as vocational and other training, and the payment of fares to unemployed persons who find employment in a district other than that in which they have been residing.

#### **Article 26 and Article 27 of the (revised) Code / Paragraphs 209 and 210 of the Explanatory Report**

ILO Convention No. 128

##### *Article 15*

2. The prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to demographic, economic and social criteria, which shall be demonstrated statistically.

3. If the prescribed age is 65 years or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in occupations that are deemed by national legislation, for the purpose of old-age benefit, to be arduous or unhealthy.

ILO Recommendation No. 131 concerning Invalidity, Old-Age and Survivors' Benefits

*Paragraph 6*

With a view to protecting persons who are over a prescribed age but have not attained pensionable age Members should provide benefits, under prescribed conditions, for—

- (a) persons whose unfitness for work is established or presumed;
- (b) persons who have been involuntarily unemployed for a prescribed period; or
- (c) any other prescribed categories of persons for which such a measure is justified on social grounds.

ILO Recommendation No. 162 concerning Older Workers

*Paragraph 24*

(1) Older workers who are unemployed during a prescribed period prior to the date on which they reach the age normally qualifying workers for an old-age benefit should, where an unemployment benefit scheme exists, continue until such date to receive unemployment benefit or adequate income maintenance.

(2) Alternatively, older workers who have been unemployed for at least one year should be eligible for an early retirement benefit during a prescribed period prior to the date on which they reach the age normally qualifying workers for an old-age benefit; the grant of early retirement benefit should not be made dependent upon a qualifying period longer than that required at the age normally qualifying workers for an old-age benefit and its amount, corresponding to that of the benefit the worker concerned would have received at that age, should not be reduced to offset the probable longer duration of payment, but, for the purpose of calculating this amount, the period separating the actual age from the age normally qualifying workers for an old-age benefit need not be included in the qualifying period.

**Paragraph 220 of the Explanatory Report**

ILO Recommendation No. 162

*Paragraph 21*

Wherever possible, measures should be taken with a view to—

- (a) ensuring that, in a framework allowing for a gradual transition from working life to freedom of activity, retirement is voluntary;
- (b) making the age qualifying for an old-age pension flexible.

**Paragraph 223 of the Explanatory Report**

ILO Recommendation No. 131

*Paragraph 18*

Where an old-age benefit is conditional upon a minimum period of contribution or employment, the amount of the old-age benefit should be increased under prescribed conditions—

(a) where the grant of the benefit is conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions of contribution or employment prescribed for a benefit defers his retirement;

(b) where the grant of an old-age benefit is not conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions prescribed for a benefit defers his claim to benefit.

ILO Recommendation No. 162

*Paragraph 29*

Older workers who are fit for work should be able to defer their claim to an old-age benefit beyond the age normally qualifying workers for such a benefit, for example either for the purpose of satisfying all qualifying conditions for benefit or with a view to receiving benefit at a higher rate taking account of the later age at which the benefit is taken and, as the case may be, of the additional work or contributions.

**Paragraph 225 of the Explanatory Report**

ILO Recommendation No. 162

*Paragraph 23*

(1) Subject to its policy regarding special benefits, each Member should endeavour to ensure that older workers whose hours of work are gradually reduced and reach a prescribed level, or who start to work on a part-time basis, receive, during a prescribed period prior to the date on which they reach the age normally qualifying workers for an old-age benefit, a special benefit in partial or full compensation for the reduction in their remuneration.

(2) The amount and conditions of the special benefit referred to in subparagraph (1) of this Paragraph should be prescribed; where appropriate, the special benefit should be treated as earnings for the purpose of calculating old-age benefit and the period during which it is paid should be taken into account in such calculation.

**Article 28 of the (revised) Code / Paragraphs 230, 233 and 235 of the Explanatory Report**

ILO Convention No. 128

*Article 16*

1. The persons protected shall comprise—

(a) all employees, including apprentices; or

(b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or

(c) all residents or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.

**Article 33 of the (revised) Code / Paragraph 255 of the Explanatory Report**

ILO Convention No. 121

*Article 7*

1. Each Member shall prescribe a definition of "industrial accident", including the conditions under which a commuting accident is considered to be an industrial accident, and shall specify the terms of such definition in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation.

**Article 36 of the (revised) Code / Paragraphs 273 and 283 of the Explanatory Report**

ILO Convention No. 121

*Article 10*

1. Medical care and allied benefits in respect of a morbid condition shall comprise—

- (a) general practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) dental care;
- (c) nursing care at home or in hospital or other medical institutions;
- (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- (e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses;
- (f) the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner; and
- (g) the following treatment at the place of work, wherever possible:
  - (i) emergency treatment of persons sustaining a serious accident;
  - (ii) follow-up treatment of those whose injury is slight and does not entail discontinuance of work.

2. The benefits provided in accordance with paragraph 1 of this article shall be afforded, using all suitable means, with a view to maintaining, restoring or, where this is not possible, improving the health of the injured person and his ability to work and to attend to his personal needs.

**Article 37 of the (revised) Code / Paragraph 286 of the Explanatory Report**

ILO Convention No. 121

*Article 13*

The cash benefit in respect of temporary or initial incapacity for work shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 19 or with the requirements of Article 20.

**Article 38 of the (revised) Code / Paragraphs 293, 297, 299, 301, 302 of the Explanatory Report**

ILO Convention No. 121

*Article 14*

1. Cash benefits in respect of loss of earning capacity likely to be permanent or corresponding loss of faculty shall be payable in all cases in which such loss, in excess of a prescribed degree, remains at the expiration of the period during which benefits are payable in accordance with Article 13.

2. In case of total loss of earning capacity likely to be permanent or corresponding loss of faculty, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 19 or with the requirements of Article 20.

3. In case of substantial partial loss of earning capacity likely to be permanent which is in excess of a prescribed degree, or corresponding loss of faculty, the benefit shall be a periodical payment representing a suitable proportion of that provided for in paragraph 2 of this article.

4. In case of partial loss of earning capacity likely to be permanent which is not substantial but which is in excess of the prescribed degree referred to in paragraph 1 of this article, or corresponding loss of faculty, the cash benefit may take the form of a lump-sum payment.

*Article 15*

1. In exceptional circumstances, and with the agreement of the injured person, all or part of the periodical payment provided for in paragraphs 2 and 3 of Article 14 may be converted into a lump sum corresponding to the actuarial equivalent thereof when the competent authority has reason to believe that such lump sum will be utilised in a manner which is particularly advantageous for the injured person.

2. Where a declaration provided for in Article 2 is in force and the Member concerned considers that it lacks the necessary administrative facilities for periodical payments, the periodical payment provided for in paragraphs 2 and 3 of Article 14 may be converted into a lump sum corresponding to the actuarial equivalent thereof, as computed on the basis of available data.

*Article 16*

Increments in periodical payments or other supplementary or special benefits, as prescribed, shall be provided for disabled persons requiring the constant help or attendance of another person.

*Article 17*

The conditions in which periodical payments due in respect of loss of earning capacity or corresponding loss of faculty shall be reassessed, suspended or cancelled by reference to a change in the degree of loss shall be prescribed.

**Article 40 and Article 41 of the (revised) Code / Paragraphs 306 and 308 of the Explanatory Report**

ILO Convention No. 121

*Article 9*

2. Eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions: Provided that a period of exposure may be prescribed for occupational diseases.

3. The benefits shall be granted throughout the contingency: Provided that in respect of incapacity for work the cash benefit need not be paid for the first three days—

(a) where the legislation of a Member provides for a waiting period at the date on which this Convention comes into force, on condition that the Member includes in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement that its reason for availing itself of this provision subsists; or

(b) where a declaration provided for in Article 2 is in force.

**Article 44 of the (revised) Code / Paragraph 319 of the Explanatory Report**

ILO Convention No. 121

*Article 11*

1. Any Member which provides medical care and allied benefits by means of a general health scheme or a medical care scheme for employed persons may specify in its legislation that such care shall be made available to persons who have sustained employment injuries on the same terms as to other persons entitled thereto, on condition that the rules on the subject are so designed as to avoid hardship.

**Article 58 of the (revised) Code / Paragraph 400 of the Explanatory Report**

ILO Convention No. 128

*Article 8*

The contingency covered shall include incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.

**Article 59 of the (revised) Code / Paragraphs 406, 409, 411 of the Explanatory Report**

ILO Convention No. 128

*Article 9*

1. The persons protected shall comprise—

- (a) all employees, including apprentices; or
- (b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or
- (c) all residents, or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.

**Article 64 of the (revised) Code / Paragraphs 439, 443, 444a and 445a of the Explanatory Report**

ILO Convention No. 128

*Article 21*

1. The contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner.

2. In the case of a widow the right to a survivors' benefit may be made conditional on the attainment of a prescribed age. Such age shall not be higher than the age prescribed for old-age benefit.

3. No requirement as to age may be made if the widow—

- (a) is invalid, as may be prescribed; or
- (b) is caring for a dependent child of the deceased.

4. In order that a widow who is without a child may be entitled to a survivors' benefit, a minimum duration of marriage may be required.

**Article 65 of the (revised) Code / Paragraph 447 of the Explanatory Report**

ILO Convention No. 128

*Article 22*

1. The persons protected shall comprise—

- (a) the wives, children and, as may be prescribed, other dependants of all breadwinners who were employees or apprentices; or
- (b) the wives, children and, as may be prescribed, other dependants of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 75 per cent of the whole economically active population; or

(c) all widows, all children and all other prescribed dependants who have lost their breadwinner, who are residents and, as appropriate, whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the provisions of Article 28.

**Article 66 of the (revised) Code / Paragraph 458 of the Explanatory Report**

ILO Recommendation No. 131 concerning Invalidity, Old-Age and Survivors' Benefits

9. Where the widow's right to a survivors' benefit is conditional on the attainment of a prescribed age, a widow below that age should be given every assistance and all facilities, including training and placement facilities and the provision of benefit where appropriate, to enable her to obtain suitable employment.

10. A widow whose husband had fulfilled the prescribed qualifying conditions, but who does not herself fulfil the conditions for a survivors' benefit, should be entitled to an allowance for a specified period, or a lump-sum death benefit.

**Article 72 of the (revised) Code / Paragraph 543 of the Explanatory Report**

ILO Convention No. 128

*Article 29*

1. The rates of cash benefits currently payable pursuant to Article 10, Article 17 and Article 23 shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living.

2. Each Member shall include the findings of such reviews in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation, and shall specify any action taken.

**Article 74 of the (revised) Code / Paragraph 556 of the Explanatory Report**

ILO Convention No. 102

*Article 69*

A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to X of this Convention may be suspended to such extent as may be prescribed—

(a) as long as the person concerned is absent from the territory of the Member;

(b) as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service, subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary;

(c) as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period in respect of which he is indemnified for the contingency by a third party, subject to the part of the benefit which is suspended not exceeding the other benefit or the indemnity by a third party;

(d) where the person concerned has made a fraudulent claim;

(e) where the contingency has been caused by a criminal offence committed by the person concerned;

(f) where the contingency has been caused by the wilful misconduct of the person concerned;

(g) in appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries;

(h) in the case of unemployment benefit, where the person concerned has failed to make use of the employment services placed at his disposal;

(i) in the case of unemployment benefit, where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, or has left it voluntarily without just cause; and

(j) in the case of survivors' benefit, as long as the widow is living with a man as his wife.

**Paragraph 578 of the (revised) Code**

ILO Convention No. 128

*Article 31*

1. The payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity.