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EUROPEAN SOCIAL CHARTER GOVERNMENT COMMITTEE

REPORT CONCERNING CONCLUSIONS XXII-2 (2021) OF THE 1961 EUROPEAN SOCIAL CHARTER

(Croatia, Czech Republic, Denmark, Luxembourg, Poland, Spain, United Kingdom)

*Detailed report by the Government Committee
established by Article 27(3) of the European Social Charter¹*

Written information submitted by States on findings of non-compliance is the responsibility of the States concerned. This information remains in English or French, according to the indications provided by the States.

Automated translation

¹ The detailed and abridged reports are available at www.coe.int/socialcharter.

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I. INTRODUCTION

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereinafter the "Governmental Committee"), composed of delegates from each of the forty-three States bound by the 1961 European Social Charter or the European Social Charter (revised). A representative of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in an advisory capacity.

2. Since a decision by the Ministers' Deputies in December 1998, the other signatory States have also been invited to take part in meetings of the Governmental Committee (Liechtenstein, Monaco, San Marino and Switzerland).

3. Supervision of the application of the European Social Charter is based on examination of the national reports submitted at regular intervals by the States Parties. In accordance with Article 23 of the 1961 Charter as amended by the 1991 Protocol, the Party "shall transmit copies of its reports [...] to those of its national organisations which are members of international organisations of employers and trade unions". The reports are made public on the www.coe.int/socialcharter website.

4. The European Committee of Social Rights (Article 25 of the Charter) is responsible for examining states' compliance with the Charter, and its decisions are recorded in a set of "Conclusions". On the basis of these conclusions and the oral examination, at meetings, of the action taken by the States, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers, which may "make any necessary recommendations to each of the Contracting Parties" (Article 29 of the Charter).

5. In accordance with Article 21 of the 1961 Charter as amended by the 1991 Protocol, the national reports on the Articles of the Charter relating to health, social security and social protection to be submitted under the 1961 European Social Charter and the revised European Social Charter concern Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovenia, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Republic of Northern Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Türkiye, United Kingdom and Ukraine.² The reports cover the reference period from 1 January 2016 to 31 December 2019 and were due no later than 31 December 2020. It should be noted that Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal were obliged to submit the simplified report without the ECSR's conclusions. As these countries are bound by the collective complaints procedure concerning the follow-up to decisions on the merits of collective complaints in which the European Committee of Social Rights has found a violation, the ECSR has adopted conclusions in respect of these eight States.

² States which have ratified the revised European Social Charter before the end of December 2021: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, Republic of Northern Macedonia, Netherlands, Norway, Portugal, Romania, [Russian Federation], Serbia, Slovak Republic, Slovenia, Sweden, Türkiye and Ukraine. States that have ratified the 1961 Charter before the end of December 2021 : Croatia, the Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain, the Kingdom of the Netherlands as regards Aruba, the Kingdom of the Netherlands as regards Curaçao, the Kingdom of the Netherlands as regards Sint Maarten, the Kingdom of the Netherlands as regards the Caribbean part, and the United Kingdom.

6. Conclusions XXII-2 (2021) of the European Committee of Social Rights were adopted in January 2022 for Croatia, the Czech Republic, Denmark, Luxembourg, Poland, Spain and the United Kingdom.

7; Germany and Iceland did not submit their reports in time for them to be examined by the ECSR. The Governmental Committee reiterates that it attaches great importance to compliance with the deadline by the States Parties.

8. The Government Committee held two meetings in 2022 in a hybrid format - in Strasbourg and online via the kudo platform (144th Meeting, 30 May to 3 June 2022, 145th Meeting, 21 to 25 November 2022) under the chairmanship of Mr Joseph FABER (Luxembourg). Mr FABER having resigned on 31 December 2022, in accordance with its rules of procedure, the Government Committee, at its autumn meeting, elected a new member of the Bureau, Mr Edward BUTTIGIEG (Malta), for the remaining year of a two-year term of office (until 31 December 2023). It then elected Mr Aongus HORGAN (Ireland) as Chairman. The composition of the Bureau was established as follows: Mr Aongus HORGAN (Ireland) as Chairman, Ms Julie GOMIS (France) and Ms Yvette KALDEN (Netherlands) as Vice-Chairmen, Ms Velga LAZDINA-ZAKA (Latvia) as Member and Mr Edward BUTTIGIEG (Malta) as Member.

9. The status of signatures and ratifications at 31 December 2021 is shown in Annex II to this report.

II. EXAMINATION OF CONCLUSIONS XXII-2 (2021) OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

10. The Governmental Committee applied the rules of procedure adopted at its 134th meeting (26 - 30 September 2016). In accordance with the decision taken by the Committee of Ministers at its meeting 1196th of 2 April 2014, the Governmental Committee discussed orally only the conclusions of non-compliance selected by the European Committee of Social Rights.

11. The Governmental Committee has examined the situations that do not comply with the European Social Charter listed in Appendix III to this report.

A. Proposed recommendations

12. During the 2022 monitoring cycle, the Governmental Committee proposed 12 recommendations concerning Articles 3§2, 3§3, 3§4, 11§1, 11§3, 13§1, 14§1, 23 of the Revised Charter and Article 4 of the Additional Protocol of 1988 with regard to the following countries: Azerbaijan, Bosnia-Herzegovina, Czech Republic, Denmark, Hungary, Republic of Moldova, Netherlands, Romania and Türkiye. It also proposed two grouped recommendations, one concerning the absence of a report for Germany and Iceland and the other concerning the repeated conclusions in which the European Committee of Social Rights was unable to establish whether the national situation was in conformity with the Charter (Albania, Azerbaijan, Bosnia-Herzegovina, Malta, Moldova, Slovak Republic and Türkiye). These two grouped recommendations were adopted by consensus.

13. In the following cases of non-compliance, recommendations were adopted in accordance with the procedural rules: Czech Republic (Article 13§1), Denmark (Article 4 of the Additional Protocol).

14. Recommendations have not been adopted for United Kingdom (Article 3(1)), Croatia (Article 13(1)) and Poland (Article 14(1)).

B. Review of findings of non-compliance and remaining findings

15. The Governmental Committee also examined other situations of non-compliance with the provisions relating to the themes of health, social security and social protection of the European Social Charter, a list of which appears in Appendix II to this report. It was not proposed to vote on a

recommendation concerning Spain (Article 13§1), the United Kingdom (Article 13§1) and Croatia (Article 13§4) in the light of information on developments in the national situation.

16. The Governmental Committee also took note of the conclusions deferred due to a lack of information or questions asked for the first time, and invited the States concerned to provide the relevant information in the next report (see the list of these conclusions in Appendix III to this report).

17. In the course of its examination, the Governmental Committee also took note of significant positive developments in several States Parties (see Annex IV).

18. The Governmental Committee proposed that the Committee of Ministers adopt the following resolutions:

**Resolution on the implementation of the European Social Charter during the period 2000-2006
2016-2019 (Conclusions 2021), provisions relating to the "Health, social security and social protection" thematic group.**

*(Adopted by the Committee of Ministers on
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers,³

Referring to the European Social Charter, in particular the provisions of Article C of Part IV thereof;

Having regard to Article 28 of the 1961 Charter as amended by the 1991 Protocol ;

Considering the reports on the European Social Charter submitted by the Governments of Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Republic of Northern Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Türkiye, United Kingdom and Ukraine;

Given the absence of a report from Germany and Iceland ;

Considering Conclusions 2021 and XXII-2 of the European Committee of Social Rights appointed under Article 25 of the 1961 Charter as amended by the 1991 Protocol;

Following the proposal of the Governmental Committee established under Article 27 of the 1961 Charter as amended by the 1991 Protocol,

Noting that the Governmental Committee has decided to select, in the light of the conclusions of the European Committee of Social Rights and the reports of the States Parties and on the basis of social, economic and other general policy considerations, the situations which it considers should be the subject of recommendations to each State Party;

³ At the 492nd meeting of the Ministers' Deputies in April 1993, the Deputies "unanimously agreed to the introduction of the rule that only representatives of States which have ratified the Charter shall vote in the Committee of Ministers when the latter acts as supervisory organ for the application of the Charter". The States that have ratified the European Social Charter or the European Social Charter (revised) are (1 December 2022): Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Republic of Northern Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Türkiye, Ukraine and United Kingdom.

Draws the attention of the governments concerned to the recommendations adopted concerning conclusions 2021 and XXII-2 of the European Committee of Social Rights, following proposals from the Governmental Committee.

Draft Recommendation RecChS(2023)... on the application of the European Social Charter by Albania, Azerbaijan, Bosnia and Herzegovina, Malta, Moldova, the Slovak Republic and Türkiye (period from 1 January 2016 to 31 December 2019) (Conclusions 2021)

(adopted by the Committee of Ministers on ... 2023, at the ... meeting of the Ministers' Deputies)

The Committee of Ministers,⁴

Having regard to the European Social Charter, and in particular the provisions of Article C of Part IV thereof;

Having regard to Article 28 of the 1961 Charter as amended by the 1991 Protocol ;

Considering the reports on the European Social Charter submitted by the Governments of Albania, Azerbaijan, Bosnia-Herzegovina, Malta, Moldova, the Slovak Republic and Türkiye;

Considering Conclusions 2021 and XXIII-2 of the European Committee of Social Rights appointed under Article 25 of the 1961 Charter as amended by the 1991 Protocol;

Having regard to the repeated conclusions of the European Committee of Social Rights that it was unable to establish whether the national situation was in conformity with the Charter under Article 3.3 (for Malta and Moldova), Article 11.3 (for Albania, Azerbaijan and the Slovak Republic), Article 13.4 (for Türkiye) and Article 14.2 (for Bosnia-Herzegovina and Türkiye), given the lack of sufficient information despite the Committee's repeated requests;

Having regard to the failure of the Governmental Committee to submit within the time limit set by the Governmental Committee a written reply on the development of the national situation and on the measures taken or envisaged to bring it into line with the Charter or the 1961 Charter, as the case may be ;

On the basis of the Declaration on the honouring of commitments by member states of the Council of Europe, adopted by the Committee of Ministers on 10 November 1994 at its 95th session, and in accordance with the statutory terms of reference of each body;

Stressing that it is the primary responsibility of any Member State which has breached its statutory obligations to take steps to remedy the situation ;

Recalling that a timely written reply is essential if the Governmental Committee is to fulfil its task, in accordance with Article 27.3 of the 1961 Charter, of preparing the decisions of the Committee of Ministers in the light of the reports of the ECSR and of the Contracting Parties, giving reasons for its choices on the basis of social, economic and other general policy considerations;

Following a proposal by the Government Committee,

Recommends that Albania, Azerbaijan, Bosnia-Herzegovina, Malta, Moldova, the Slovak Republic and Türkiye :

⁴ in its composition limited to representatives of the States party to the European Social Charter or the revised European Social Charter.

- comply with their obligation to report to the European Committee of Social Rights,
- comply with calls for the submission of information within the deadlines set by the Government Committee in order to ensure the effectiveness of discussions at its plenary sessions,
- invite the Contracting Parties to set up an effective mechanism at national level, if they consider it necessary, to ensure the completeness and timely submission of reports to the European Committee of Social Rights, as well as of the replies requested by the Governmental Committee as part of the follow-up to the conclusions of the European Committee of Social Rights.

III. EXAMINATION BY ARTICLE⁵

1961 EUROPEAN SOCIAL CHARTER

Article 3, paragraph 2 - issue health and safety regulations, in consultation with employers' and workers' organisations

19. The Secretariat recalled that the first obligation of the States Parties under Article 3 is to ensure the right to the highest attainable standard of safe and healthy working conditions. Under §2, this obligation implies the adoption of safety and health regulations providing for measures to prevent and protect against risks in the workplace. The Charter does not really define the risks to be regulated. Control is carried out indirectly, by reference to international technical standards on health and safety at work, such as ILO conventions and EU directives on health and safety at work.

20. Domestic law must include framework legislation - often the Labour Code - which defines the responsibilities of employers and the rights and duties of workers, as well as specific regulations. Given the particularly variable nature of the subject in the light of technological, ergonomic and medical progress, existing regulations must be adapted to new circumstances where the rules prove unsuitable for the situation.

21. All economic sectors must be covered by the framework law and the regulations. It is not necessary to adopt a specific text for each activity or sector, but the wording of the texts must be sufficiently precise to enable them to be applied effectively in all sectors, taking account in particular of the scale or degree of danger of each sector. The sectors must be covered in their entirety and all companies must be covered, regardless of the number of employees.

22. No workplace, even an inhabited one, can be "exempted" from the application of health and safety rules. Workers employed in residential premises, i.e. domestic workers and home workers, must therefore be covered, but the rules can be adapted to the type of activity and the relatively low-risk nature of these workers' occupations and be formulated in general terms.

23. Self-employed workers who work in several workplaces must not suffer any discrimination in terms of health and safety at work compared to employees or civil servants, and must therefore also be covered by the regulations.

24. Regulations must be drawn up in consultation with employers' and workers' organisations.

CSE 1961 3§1 (CSER 3§2) UNITED KINGDOM

25. The ECSR concluded that the situation in the United Kingdom did not comply with Article 3§1 of the 1961 Charter on the grounds that not all self-employed workers and domestic servants were covered by occupational health and safety regulations.

⁵ States parties in English alphabetical order.

26. The Secretariat summarised that the problematic issue is the personal scope of the regulations. In response to the previous finding of non-compliance on this ground, the report states that the current UK legal framework provides comprehensive employment and social protection for domestic workers and that, as a general rule, domestic workers enjoy the same general employment rights as other workers. The report states that it is neither proportionate nor practical to extend criminal health and safety law to the employment of domestic workers in private households. As far as self-employed workers are concerned, the report states that the risks they run as a result of their professional activities are fully covered by the legal framework. The report states that self-employed workers cannot be described as being exposed to the same risks as employees, as the working environment and the control of this environment are different. As far as the Isle of Man is concerned, section 51 of the *Health and Safety at Work etc Act 1974* states that nothing in that part applies to a person by reason only that he employs another person or is himself employed as a domestic servant in a private household. This means that domestic employees in a private household are exempt from health and safety regulations.

27. The Committee took note of this information and recalled that all workers, including domestic workers and the self-employed, must be covered by occupational health and safety regulations. It reiterated its finding of non-conformity in this respect.

28. The Secretariat recalled that in 2007, the Committee had postponed its conclusion pending the information requested. In 2009 and 2013, the ECSR concluded that the general situation was in conformity with Article 3.1 of the ESC, pending information on the protection of domestic workers. In particular, in 2009, the ECSR reiterated that the exclusion of domestic workers from any type of labour inspection was a matter of concern as they were considered a vulnerable category of workers. In 2013, the ECSR noted that "domestic servants" employed in private households were not covered by the Health and Safety Act and other related legislation, whereas other domestic workers (such as health or social care workers) are. It has been reported that the domestic work sector is not seen as a priority for UK health and safety regulators, who focus their resources on sectors that present the greatest risks to workers and the public. In this context, the report noted particular difficulties with the inclusion of domestic workers, given the extent to which the state should interfere in the private home. The ECSR recalled that all workplaces and activities must be covered by occupational health and safety regulations. This also includes self-employed workers, homeworkers and domestic workers (see Conclusions XIX-2 Luxembourg; Conclusions XIX-2 Poland; Conclusions XIX-2 Spain).

29. In assessing the information provided in response to its questions, the ECSR noted in the 2017 Conclusions arguments that it would not be proportionate or practical to extend criminal health and safety law, including inspections, to private households employing domestic workers, as this would impose disproportionate burdens and raise privacy concerns. The ECSR considered that, in the absence of protection for all domestic workers, the situation did not comply with the Charter.

30. In relation to self-employed workers, the ECSR noted that the health and safety legislation for self-employed workers changed from 1 October 2015, with section 3(2) of the Health and Safety at Work Act not applying to self-employed workers if their work activity does not present a risk to the health and safety of others, including other workers and members of the public. The Regulation also contains a risk-based provision, according to which self-employed persons whose occupational activities present a risk of harm to others continue to have obligations under section 3(2) of the Health and Safety at Work Act, so that only self-employed persons who carry out an activity described in the Regulation will continue to have an obligation under the provision in question. The ECSR recalled that, for the purposes of Article 3(2) of the Charter, all workers, including the self-employed, must be covered by occupational health and safety regulations since employees and self-employed workers are normally exposed to the same risks. Consequently, the Committee considered that the situation was not in conformity with the Charter as far as self-employed workers were concerned.

31. In 2021, the situation has not changed and the ECSR has reiterated its finding of non-compliance.

32. The representative of the United Kingdom provided the following information:

"The servants :

1. *It is correct that domestic servants are exempt from the provisions of Part 1 of the Health and Safety at Work etc Act 1974. This part states: "Nothing in this Part applies to a person by reason only that he employs another person, or is himself employed, as a domestic servant in a private household".*

2. *It would be neither proportionate nor practical to extend criminal occupational health and safety legislation to the employment of domestic servants in private households. It would impinge on the privacy of the individuals and households concerned and impose disproportionate regulatory burdens on them. We believe that Article 31 of the Charter permits this.*

European Social Charter Article 31 - Restrictions :

1. *The rights and principles set out in Part I, when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations other than those provided for in those Parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security or public health or morals.*

3. *It should be noted that the exemption is narrow and limited to domestic service performed in a private household.*

4. *The definition of a private household depends on the nature of the dwelling. Here again, there is no precise definition and each situation must therefore be carefully examined. The person receiving domestic services may own, rent or lease their home. The existence of a right of ownership is not definitive in itself, but it is likely that the domestic accommodation owned, rented or leased by the person receiving care is a private household.*

5. *Further information is provided in Annex A.*

6. *Employers are legally obliged under civil law to pay compensation if they are found to have caused injury or illness to a domestic employee.*

7. *Most employers (with a few exceptions) are required to insure against liability under the Employer's Liability (Compulsory Insurance) Act 1969 (ELCI) so that they can compensate victims of personal injury or negligence against them. Self-employed persons (i.e. those who are not employers) are not required to insure themselves against liability under the ELCI Act, but most do take out third party liability insurance.*

Self-employed workers :

8. *Section 3 of the Health and Safety at Work etc Act 1974 imposes a duty on employers and certain self-employed persons to conduct their business in such a way as to ensure that persons who do not work for them are not exposed to risks. See Annex B for more details.*

9. *Self-employed persons who have duties to others are defined in the Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015. See Appendix C for further details.*

10. *The obligations of third parties, such as employers, contractors, etc. towards self-employed workers have not changed. The risks incurred by self-employed workers as a result of the professional activities of others are therefore fully covered by the legal framework.*

General information :

General legal framework :

11. *The Health and Safety at Work etc Act 1974 (HSWA) and its equivalent in Northern Ireland, the Health and Safety at Work (Northern Ireland) Order 1978, are the main pieces of legislation covering health and safety at work in the UK.*

12. A consolidated and updated version of the Act and Order can be found on the Ministry of Justice's UK Statute Law Database at <http://www.statutelaw.gov.uk/>. They are listed in the UK (Public Act General) as Chapter No. 37 of 1974, and the Northern Ireland Statutory Instrument 1978: No. 1039 (N.I. 9) respectively.

13. Full details of health and safety legislation as it applies in Great Britain can be found on the Health and Safety Executive website at <https://www.hse.gov.uk/legislation/>.

14. Similarly, the legislation applicable in Northern Ireland can be consulted on the website of the Health and Safety Executive for Northern Ireland (HSENI) at the following address: https://www.hseni.gov.uk/publications/type/legislation_and_regulations.

15. Overall, the enduring principle of health and safety legislation in the UK is that those who create risks are best placed to control them, and that they should do so in a proportionate and practicable way.

16. The approach is primarily target-setting, not prescriptive. It defines the objectives to be achieved, while leaving bondholders considerable leeway to decide on the measures needed to achieve these objectives and to support innovation.

17. Target setting gives bondholders the freedom and incentive to meet regulatory requirements in the most cost-effective way, applying new or existing technologies to control risk in a way that maximises their productivity.

18. It is particularly important, at a time of post-COVID-19 economic recovery, to encourage the highest levels of compliance while recognising that businesses, and in particular the self-employed, may have lost profits.

19. The table below sets out a hierarchy of controls for the bondholder to consider when planning and implementing risk control measures. By considering the headings in the order shown, and not simply jumping to the control measure that is easiest to implement, the UK believes that this approach offers the potential to achieve higher levels of risk control and compliance.

1) **Elimination** Rearrange the work or replace a substance in such a way as to remove or eliminate the hazard. For example, right holders should avoid working at height whenever possible.

2) **Substitution** Replace the equipment or process with a less dangerous one. For example, using a small mobile elevating work platform to reach heights instead of a stepladder. Care should be taken to ensure that the replacement solution is safer than the original...

3) **Engineering controls** Use work equipment or other measures to prevent falls where you cannot avoid working at height. Install or use additional equipment, such as local exhaust ventilation, to control dust or fume hazards. Separate the hazard from operators by methods such as enclosure or protection of hazardous parts of the machine or equipment. Give priority to collective protection measures over individual measures.

4) **Administrative controls** This involves identifying and implementing the procedures needed to work safely. For example: reducing the amount of time workers are exposed to hazards (e.g. by rotating tasks); banning the use of mobile phones in hazardous areas; reinforcing safety signage and carrying out risk assessments.

5) **Personal protective clothing and equipment** Personal protective equipment (PPE) should only be used when all previous measures have been tried and have proved ineffective in controlling the risks to a reasonably practicable level. For example, when you cannot eliminate the risk of a fall, use work equipment or other measures to minimise the distance and consequences of a fall (if it occurs). If chosen, PPE must be selected and fitted by the person using it. Workers must be trained in the function and limitations of each PPE item.

20. While the method of risk control adopted by a bondholder may be to reduce the duration of exposure to a risk, as discussed under "Administrative Controls", the approach adopted by the UK is

to control risk through elimination, substitution or engineering controls in the first instance. This framework would apply to Annex C sectors where self-employed persons continue to have obligations to other persons.

21. Overall, the immutable principle of health and safety legislation in the UK is that those who create risks are best placed to control them, and that they should do so in a proportionate and practicable way, including the self-employed where they are covered by the Health and Safety at Work etc Act 1974 (general duties of the self-employed) (prescribed undertakings) Regulations 2015.

Complaints and civil law cases

Civil law - compensation claims :

22. Under civil law, if an employer is responsible for an employee's injury or illness, the employee can bring a claim against the employer. If this were to happen to an employer's domestic employee in their home, civil law would cover them in the event of injury or illness. Employers can also be held liable if someone working for them has been negligent and caused harm to someone else.

23. As noted above, most employers (with a few exceptions) are required to insure against liability under the Employers' Liability (Compulsory Insurance) Act 1969 (ELCI), in order to be able to indemnify any injury or negligence claim against them. Self-employed persons (i.e. those who are not employers) are not required to insure against liability under ELCI, but most do take out public liability insurance.

24. If a claim is successful, a court may give judgment against the employer and award a sum of money ("damages") to compensate for the pain, loss and suffering caused.

The United Kingdom's record on health and safety at work compared with that of other European countries:

25. The UK compares favourably with EU Member States in terms of health and safety standards in the workplace. See Annex D for further information in tabular form.

26. The UK still has one of the lowest fatal accident rates in Europe; in 2018, the standardised rate was 0.61 per 100,000 employees. Compared to other major European economies, the UK's fatal accident rate in 2018 was on a par with Germany (0.55 per 100,000 employees) and lower than France (3.07 per 100,000 employees), Italy (1.04 per 100,000 employees) and Spain (1.49 per 100,000 employees) (Eurostat, ESAW, 2018).

27. European surveys (European Survey of New and Emerging Risks (ESENER)) reveal that the majority of British workers are convinced that their work does not put their health or safety at risk. In addition, British companies are more likely to have a health and safety policy and to follow it up with a formal risk assessment, compared with other European countries.

28. 1.9% of UK workers say they have missed work due to one or more work-related health problems. This figure is comparable to other major economies: Spain (2.8%), Italy (1.9%), France (5.4%), Germany (3.8%) and Poland (7.7%). The European data on ill health are taken from the 2013 Labour Force Survey (LFS), which is based on workers' own perceptions of work-related health problems. The survey may therefore not correspond to the official definitions in each country.

29. According to the 2015 European Working Conditions Survey (EWCS), 18% of UK workers feel that their work poses risks to their health and safety. This is one of the lowest proportions in the EU, while the EU-28 rate is around 23%. By contrast, other comparable economies have the following proportions of workers who feel that their work presents risks to their health and safety: Spain (36%), Italy (13%), France (34%) and Germany (18%). According to the EWCS, the differences in levels reported between countries may reflect, among other things, awareness of the issues,

objective differences, differences in the economic structure of employment and differences in legislation and preventive measures.

APPENDIX A :

Definitions of domestic and private household :

Guidance on Domiciliary Care and Section 51 of the Health and Safety at Work etc Act (HSWA) - SIM 7/2011/05 (hse.gov.uk)

2.1 In determining whether section 51 takes effect and disapplies the Health and Safety at Work etc. Act (HSWA) 1974, it is necessary to consider whether the two key definitions are met, namely "domestic" and "private household". These are questions of fact, not law.

2.2 Domestic worker

2.2.1 The definition of domestic service depends on the nature of the work and it is therefore important to look carefully at the duties of the employee (including the terms of their contract of employment). An employee will only be considered a domestic if their role and responsibilities are exclusively domestic in nature. Employees whose role goes beyond domestic duties are not considered to be employed exclusively as domestics and section 51 is not likely to apply. Domestic service is likely to include a wide range of personal services normally provided to and in a household.

2.2.2 Although there is no precise definition and each case must be considered individually, domestic service is likely to include the provision of basic personal care, personal services or other domestic help to meet an individual's needs, including home care and other household tasks.

2.2.3 The factors that tend to suggest that an employee is not a domestic are as follows;

- When their job involves tasks that are not part of ordinary domestic service, such as complex health care activities (for example, using life support or palliative care equipment).*
- Where the task(s) require specialist training, particularly from qualified and trained healthcare professionals. Specialist training may include, for example, training in handling people or managing behavioural problems.*

2.3 Private households

2.3.1 What constitutes a private household depends on the nature of the household. Again, there is no precise definition, so each situation needs to be considered carefully. The person receiving domestic services may own, rent or lease their home. The existence of ownership is not definitive in itself, but it is likely that domestic accommodation that is owned, rented or leased by the person receiving care is a private household.

2.3.2 The situation is more complicated where people rent or own bedrooms, but share other 'common services' (such as communal dining rooms, kitchens, bathrooms or lounges, etc.)). These 'shared service provision' rooms are defined as non-domestic spaces (see Section 53 of the Social Services Act), where the Social Services Act may apply. If a carer works in both the 'domestic' part of the building and the 'common services' areas, section 51 HSWA will not apply (and for example, sections 2 and 3 will apply). Section 51 will potentially only apply if the work is domestic and only takes place in residential areas (and not in "common service" areas).

2.3.3 Collective accommodation such as hostels, hospices, care homes or similar premises are unlikely to be private households. It is unlikely that a person employed as a carer for each single person occupying a flat or dwelling with communal facilities would be employed in a private household".

33. The Chairman pointed out that in order to comply with Article 3 of the Charter, it was not necessary to apply to domestic workers exactly the same regulations as to large employers. He asked the authorities how they could remedy the situation, in order to respond to the ECSR's conclusion.

34. The UK representative said that she was open to dialogue to see how the issue could be addressed. She pointed out that the UK framework was structured in a particular way and that it was not possible to change the main law, but that they could discuss how to use other means to ensure compliance with the Charter.

35. The Chairman noted that the United Kingdom is not opposed to a recommendation, even if it does not welcome it.

36. The Government Committee therefore voted on a recommendation in this respect, which was not adopted (18 in favour, 5 against and 12 abstentions).

37. The representative of France regretted that a recommendation had not been adopted because, in addition to the welcome opening up of dialogue with the ECSR, a recommendation would make it possible to refer the matter to the Committee of Ministers, which would be perfectly equipped to examine the specific nature of the British situation, discuss it in the light of exchanges with other peers and make a greater contribution to the issue, including for the ECSR.

38. The Governmental Committee invited the UK authorities to enter into a dialogue with the ECSR, assisted by the Secretariat, in order to find a solution to the problem.

Article 13 - Right to social and medical assistance

39. The Secretariat gave a brief presentation on Article 13.1 (right to social and medical assistance). The most problematic issues in 2021 were the inadequate level of social assistance paid to a single person without resources (below the poverty line). The cases selected by the ECSR for consideration by the General Assembly are those in which the right to social and/or medical assistance is not guaranteed to everyone in need and those in which the level of social assistance is manifestly inadequate and falls below the threshold. Twenty-five countries were evaluated and the cases selected were those that were inadequate, below the poverty line.

ESC 1961 13§1 Croatia

40. The ECSR concluded that the situation in Croatia did not comply with Article 13§1 of the 1961 Charter for the following reasons:

- the means of subsistence are not guaranteed to persons in need whose social assistance has been withdrawn as a penalty for refusing an offer of employment;
- it is not established that the right to medical assistance is effectively guaranteed to all persons in need;
- the level of social assistance is manifestly insufficient;
- nationals of other States Parties are subject to a condition of excessive length of residence in order to qualify for social assistance.
- foreign nationals residing illegally in the country are not entitled to emergency social assistance.

41. With regard to the first reason for non-compliance, the report states that the reason for the withdrawal of social assistance as a sanction for refusing a job offer was that people whose entitlement to the guaranteed minimum benefit (GMA) had been revoked could receive a one-off benefit in very limited cases. The report also states that other members of the household do not lose the right to the guaranteed minimum allowance, but only the person who has refused a job offer to which the city, municipality or civil society organisations have responded. However, only those entitled to AMG are entitled to the housing allowance recognised by the local self-government. Consequently, those whose rights had been revoked had no other specific means of subsistence. The ECSR therefore reiterated its finding of non-conformity on this point.

42. As regards the second ground of non-compliance, namely that the right to medical assistance is not effectively guaranteed to all persons in need, the ECSR has previously noted that medical

assistance is available under the compulsory insurance scheme to persons who have acquired insured status. Similarly, destitute persons registered with the employment service are entitled to medical assistance. Refugees and other foreign nationals benefiting from international protection, who are legally present in Croatia, are entitled to emergency medical care, as are illegal foreign nationals awaiting expulsion. However, medical assistance was not clearly provided for people not covered by the general insurance scheme or not registered with the employment service and not benefiting from international protection. The ECSR therefore considered that it had not been established that the right to medical assistance was effectively guaranteed to everyone in need.

43. As regards the third ground for non-compliance, relating to the level of social assistance, the ECSR took into account the information on the amounts of benefits provided in the MISSOC database and noted that the minimum assistance that can be obtained (€107) is not compatible with the poverty threshold (€304). It therefore reiterated its conclusion.

44. With regard to the fourth ground for non-compliance, the ECSR noted that nationals of other States Parties were subject to an excessive residence requirement of five years in order to qualify for social assistance, which means that the situation is still not in line with the 1961 Charter. It should be noted that the report does not provide additional information on access to social assistance and emergency medical assistance.

45. As regards the fifth ground of non-compliance, according to the report, although asylum seekers, asylees, victims of trafficking and other foreign nationals enjoying international protection are entitled to emergency medical care, this is only the case for foreign nationals in an irregular situation if they are to be returned or if they are in reception centres. The ECSR therefore concluded that the situation did not comply with the 1961 Charter, as no emergency social assistance was provided for foreign nationals in an irregular situation on the territory.

46. The first ground for non-compliance, namely that means of subsistence are not guaranteed to persons in need whose social assistance is withdrawn as a sanction for refusing a job offer, dates back to 2013 (Conclusions XX-2). The second ground for non-compliance, namely that it has not been established that the right to medical assistance is effectively guaranteed to all persons in need, was found by the ECSR for the first time in 2021 (Conclusions XXII-2).

47. As regards the third ground for non-compliance, it should be noted that this is a long-standing non-compliance, dating back to 2006, when the ECSR concluded that the situation in Croatia was not compliant because the level of social assistance provided was manifestly inadequate.

48. The fourth ground for non-compliance, that nationals of other States Parties are subject to excessive residence periods, is also a long-standing ground for non-compliance, dating back to 2009 (Conclusions XIX-2). The fifth ground for non-compliance was first identified in 2021 (Conclusions XXII-2).

49. The GC reviewed the situation in 2014. Regarding non-compliance on the grounds that it has not been established that means of subsistence are guaranteed to persons in need, whose social assistance is withdrawn as a sanction for refusing a job offer and that the level of social assistance is manifestly inadequate, on the basis of the information provided by the Croatian representative, the GC concluded that the situation was moving in the right direction and decided to wait for the next ECSR assessment. With regard to the excessive length of residence required of nationals of other States Parties in order to qualify for social assistance, the information requested by the General Assembly was not received within the deadline set.

50. The Chairman gave the floor to the Croatian representative, who presented the following points:

*"At the beginning of this year, a **new law on social protection was adopted**. It stipulates all the situations and people entitled to guaranteed minimum compensation. Guaranteed minimum compensation is the right to a monetary amount that guarantees the satisfaction of the vital needs of a single person or a household that does not have sufficient funds to satisfy its vital needs. The*

amount of **guaranteed minimum compensation** paid depends on the status of the beneficiary, whether they are single, unable to work, etc.

The GMC's aim is to prevent extreme poverty and social exclusion and to encourage the social integration and professional activation of social assistance recipients.

In particular, we highlight the challenge related to the inclusion of people who can work fully or partially, who are GMC users in the labour system, which needs to be addressed in the new programme period 2021-2027 of the guaranteed funds. The mentioned challenge, its solution, is in line with the recommendation (**CSR-Country Specific Recommendations**) which stresses the need for a **better connection of social services with labour market measures and institutions**. Social inclusion activities and social services will guide users towards the labour market, mainly using the **role of social mentors**.

The amount of the GMC corresponds to a prescribed percentage of the base determined by a decision of the Government of the Republic of Croatia. The basis on which the GMC is calculated is HRK 1,000.00 (€133).

The amount of CMG for a single person is set at 100% of the base, and for an elderly person and an adult totally unable to work at 130% of the base. The aim is to reach HRK 1,200.00 (€160) by 2024.

For the household, the amount of the CMG is calculated by adding together the shares of each member of the household, bearing in mind that the shares of the members of the household amount to :

- for a single parent, 100% of the basic rate
- for an adult member of the household, 60% of the base
- for one child, 40% of the base
- for a child of a single parent or a single-parent family, it is 55% of the base.

The amount of the GMC for the household may not exceed 150% of the gross minimum wage in the Republic of Croatia (HRK 7,031.25 - €933).

The minimum gross salary for **2022** is HRK 4,687.50 - **€622** (in **2021** it was HRK 4,250.00 - €564) and the net salary is HRK 3,750.00 - **€500** (in **2021** it was HRK 3,400.00 - **€451**).

In addition, if a single person or a member of a household entitled to GMC is **employed** for a continuous period of at least six months, that person's **entitlement is not automatically revoked**. **During the first three months of employment, the amount of guaranteed minimum pay is reduced by 50% of the recognised amount**. Entitlement to **GMC ceases** for a single person or a household **after three months of work** if the average income over the last three months exceeds the recognised amount of the guaranteed minimum compensation for a single person or a household.

It is important to stress that the new law on social protection stipulates that entitlement to **GMC will only cease for people whose refusal of employment is unjustified** and that, **if it is established that the reasons for the refusal of employment are justified, entitlement will not be revoked**. The principle of subsidiarity stipulates that a person who is unable to support himself through work, entitlements arising from work or insurance, income from property, other sources, persons who are required to support him under the law governing family relationships or in some other way, may obtain benefits and services under the social protection system under the conditions and in the manner prescribed by this law.

As the labour market has evolved considerably in recent years, the demand for labour in various sectors has increased. With the aim of preventing undeclared work, the Republic of Croatia has drafted **the Undeclared Work Abolition Act, which is** currently in its final stages and is due to come into force on 1 January 2023. One of the main objectives of this law is to prevent and better control undeclared work, so the supervision of inspections has been strengthened and new mechanisms and tools have been introduced, with the aim of eliminating this form of work. This law provides for higher fines for offenders, employers who fail to declare their workers. A **blacklist** has even been introduced for these employers.

As I mentioned, to help users of the social protection system, particularly those who can work, the new law on social protection has introduced, in addition to the GMC, a **new social service - the social mentoring service**. The aim is to activate GMC beneficiaries (single person or member of a household) who are unemployed and can work or partially work on the labour market. It is implemented through an **individual approach** to each user and the development of their potential

according to their needs, in order to encourage the inclusion of long-term unemployed GMC users in the labour market, in particular by **strengthening cross-sectoral and inter-institutional cooperation between employment services and social assistance centres** and improving the quality of the social assistance services provided by these centres.

In addition, the **new institute** provided for in the regulation on the monthly amount of compensation for a purchaser of energy at risk is **NUKE** - Compensation for a purchaser of energy at risk.

This is the right to subsidise electricity costs. Endangered energy purchaser status can be obtained by :

- GMC beneficiary,
- a member of the household who is a GMC beneficiary,
- a user of the personal disability allowance and
- a member of the household of a beneficiary of a personal disability benefit.

The amount of compensation for vulnerable energy buyers has been increased from HRK 400 to 500 - from €53 to €66 per month.

The following **social protection rights cover all categories of socially vulnerable people:**

- guaranteed minimum pay (GMC),
- compensation for accommodation costs,
- the right to the cost of firewood,
- compensation for the personal needs of those using the accommodation,
- one-off costs,
- education-related costs,
- personal disability allowance,
- assistance and care allowance,
- the status of the carer's parent or the status of the carer,
- remuneration until employment
- the right to compensation for a threatened energy purchaser and
- social services: first social service (information, identification and initial assessment of needs), advice and assistance, home help, psychosocial support, early intervention, help with inclusion in mainstream education and training programmes (integration), residence, accommodation, family mediation, organised housing.

In addition, **housing costs within the meaning of this law refer to rent, council charges, heating costs, water services and costs incurred as a result of work to improve the energy efficiency of the building.** The local authority is obliged to recognise the right to housing costs of those entitled to GMC.

Given the trend towards an increase in the number of elderly people (aged 65 and over) as a proportion of the total population, and with the **aim of reducing poverty and social exclusion among the elderly**, a national benefit for the elderly has been introduced which is not subject to a working income test, which has had an impact on reducing the number of CMG recipients. Similarly, in the new programming period, the reform of the pension system continues, and reform measure C4.2 is set out in the **National Recovery and Resilience Plan 2021-2026**. Improving the pension system by increasing pension adequacy, which refers to increasing pension adequacy through continued pension reform. In addition, the **action plan to combat poverty and social exclusion for the period 2021-2027** defines a measure linked to the redefinition of the family pension model, which defines the level of social security for this sensitive category of pensioners in the event of a significant loss of income following the death of a spouse or partner. By amending the legal framework, it is possible to make appropriate use of part of the pension of the deceased spouse/common-law partner in addition to the personal pension and/or the increase in the family pension.

The new Social Welfare Act has changed the model for what are known as increased flat-rate allowances. Social welfare centres can approve increases in the single allowance of up to HRK 10,000 - €1,327, which under the old Social Welfare Act was approved by the ministry responsible for social affairs, enabling faster, more effective and more efficient assistance to people in need.

Furthermore, given that the aim is to improve the activation of unemployed people of working age and their inclusion in the labour market, the existing legal framework is necessary precisely for these reasons.

Thus, in a situation where entitlement to the CMM is granted to the household and a person who can work fully or partially as a member of the household fails to fulfil his or her obligation to report to the competent employment service - the Croatian Employment Service, only that member's entitlement to his or her share of the CMM is revoked, while the other members will continue to be recognised as entitled to the shares for which they meet the required conditions. If a single person's entitlement to social assistance is revoked in accordance with the provisions of the Act, during the period preceding the time when the conditions for realisation of the entitlement are again met, the person may, in accordance with the conditions prescribed by the Social Assistance Act, realise the entitlement to a one-off benefit or to humanitarian assistance such as food or accommodation, if the need arises. The city or municipality may also grant certain assistance in accordance with its decisions, as may civil society organisations.

Furthermore, with regard to the provision of medical assistance, in accordance with the provisions of **the Act on Compulsory Health Insurance and Health Care for Foreigners in the Republic of Croatia**, specifically Articles 17, 19 and 24, **foreigners and persons residing illegally in the Republic of Croatia obtain and fulfil the right to health care and emergency medical assistance, as do** persons with compulsory health insurance. If they are unable to cover the costs, they will be reimbursed by the budget of the Republic of Croatia.

<https://www.zakon.hr/z/634/Zakon-o-obveznom-zdravstvenom-osiguranju-i-zdravstvenoj-za%C5%A1titi-stranaca-u-Republici-Hrvatskoj->

In addition, in accordance with the Law on Social Protection, the benefits and services of the social protection system may be recognised or approved, under the conditions prescribed by the aforementioned law, in addition to Croatian citizens residing in the Republic of Croatia :

- a foreigner with permanent and long-term residence in Croatia
- a stateless person with temporary, permanent and long-term residence in Croatia.
- a foreign national benefiting from subsidiary protection and an asylum seeker and their legally resident family members
- resident in Croatia,
- a foreign national with established status as a victim of human trafficking.

Exceptionally, the right to a single allowance and the right to accommodation service may also be granted to a person who is not on the above list, if his or her living circumstances so require.

The law on foreign nationals (Official Gazette 133/20) sets out the conditions relating to the duration of temporary residence.

Foreign citizens residing illegally on the territory of the Republic of Croatia receive assistance governed by regulations that fall within the remit of several ministries. For example, the Law on International and Temporary Protection (Official Gazette 70/15, 127/17) defines accommodation in a reception centre for foreign nationals and falls within the remit of the Ministry of the Interior, international organisations and CSOs, such as the Croatian Red Cross, etc.

We would also point out that, in accordance with the law on social protection, the homeless are beneficiaries of social protection - benefits and services.

With regard to the poverty line, Croatia is not in a position to define it, as the "Comprehensive Diagnosis of Poverty and Social Exclusion" project, which is a measure in the National Plan to Combat Poverty and Social Exclusion 2021 - 2027, has not yet been implemented.

With regard to the issue of emergency social assistance, we would like to stress that the Republic of Croatia does not recognise this term, but that foreign citizens staying illegally on the territory of the Republic of Croatia, if their situation so requires, can obtain and realise the right to a one-off compensation and accommodation service.

In addition, given the circumstances caused by the COVID-19 pandemic, the Croatian Children's Foundation is providing financial support to families affected by this pandemic. The aim of this support is to alleviate the increased financial burden on families in the new situation of job loss due to the COVID-19 pandemic.

All in all, based on all the above responses, we believe that Croatia is continuously improving the rights and the system of social protection and creating conditions to meet the vital needs of people in need - members of vulnerable groups. Consequently, we believe that the situation has improved

and that the situation in the Republic of Croatia complies with the provisions of Article 13, paragraph 1 of the 1961 Charter".

51. The Chairman said that the aspects remained the same, but noted that Croatia was making great efforts in this area. He asked what the new information was, as it seemed to be the same as in the report. The Croatian representative replied that there were new elements.

52. The GC then proceeded to vote on whether there should be a recommendation on all grounds and indicate positive developments. The recommendation was not adopted. The CG then proceeded to vote on each recommendation individually. No recommendation was adopted. The GC therefore invited Croatia to continue its efforts.

ESC 1961 13§1 Spain

53. The ECSR concluded that the situation in Spain did not comply with Article 13§1 of the 1961 Charter for the following reasons:

- In most Autonomous Communities, eligibility for the minimum income was subject to a residence requirement;
- Eligibility for the minimum income was subject to age conditions;
- The minimum income is not paid as long as the need persists;
- The level of social assistance paid to a single person was inadequate.

54. As regards the first three grounds for non-compliance, the ECSR noted that the report did not provide any information on the conditions of eligibility for minimum income, in particular residence and age requirements, nor on the duration of the income (which should be paid for as long as the need persists). The ECSR considered that the situation, previously found to be contrary to the Charter, had not changed during the reference period and therefore reiterated its finding of non-conformity on these points. The ECSR took note of the entry into force of Royal Decree-Law 20/2020 of 29 May 2020, which establishes the minimum subsistence income and according to which all families with children in vulnerable situations are entitled to a benefit that supplements their income. As this information falls outside the reference period, it will be taken into account when assessing the situation during the next cycle.

55. As regards the fourth ground of non-compliance, namely that the level of social assistance paid to a single person was inadequate, the ECSR has previously found that the situation was not in conformity with the Charter on the grounds that the level of social assistance for single persons was manifestly insufficient in some communities. More specifically, during the reference period, the minimum insertion income was the sole responsibility of the Autonomous Communities. The guaranteed minimum income, which started at €400 as indicated for 2019, was less than 50% of Eurostat's adjusted median income, estimated at €626 in 2019, and was therefore insufficient. The ECSR noted that the report did not answer its question about regular supplementary benefits available to all poor people in addition to the guaranteed minimum income.

56. The four reasons for non-compliance are old.

57. The first two date from 2000 (findings XV-1) and are found in 2002 (XVI-1), 2004 (XVII-1), 2006 (XVIII-1), 2009 (XIX-2), 2013 (XX-2) and 2017 (XXI-2), while the third and fourth date from 2006 and are found in 2009, 2013 and 2017.

58. In 2003 and 2005, the GC decided to wait for the next ECSR assessment (in 2003, a warning was voted but not adopted). In 2007, the GC adopted a warning for the first two grounds and invited Spain to bring the situation into conformity for the third and fourth grounds of non-compliance (which were noted at the time for the first time). In 2010, 2014 and 2018, the GC waited for the next assessment by the ECSR, which repeatedly considered that the situation was not compliant.

59. The representative of Spain provided the following information:

In its conclusions XII-2 (2021) of non-conformity, concerning Spain's compliance with article 13, section 1 of the aforementioned European Social Charter, the European Committee of Social Rights refers to the following aspects:

Article 13.1. Right to social and health care. Appropriate assistance to any person in need.

- ***Entitlement to a minimum income is conditional on a period of residence in most Spanish regions.***
- ***Entitlement to a minimum income is subject to age criteria.***
- ***Payment of the minimum income is too late.***
- ***The level of assistance for a single person with no resources is considered insufficient.***

General comment: the introduction of the minimum income system.

The Minimum Income Scheme (MIS) is a non-contributory benefit designed to combat extreme poverty. It was created by Royal Decree-Law in May 2020, in the context of the COVID pandemic, and is currently governed by Law 19/2021.

After years of a regional system in which we had a different benefit for each region (a total of 17), MIS has been established as a common basic benefit with the same structure and criteria for the whole territory. Even if beneficiaries move to another region, they will still have access to MIS without any difference.

Regional benefits can now act as a complement or supplement to the MIS.

A double condition of income and assets is set to assess the vulnerability of applicants and aid is granted according to the constitution and circumstances of the conviviality unit.

In addition, the service allows local social services or certain registered NGOs to certify certain circumstances of applicants/beneficiaries.

Approximately two years after the SMI came into force, more than 523,000 households, including 1,453,773 people, received this benefit. 2/3 of households are headed by women. Over 42% of recipients are children.

The MIS is an important step in the Spanish system of social protection and the fight against extreme poverty. It is the first time that a national benefit has been created for this purpose, and it is accompanied by a new social inclusion policy drawn up, for the first time in our history, at State level by the Ministry of Inclusion, Social Security and Migration.

A special effort is being made to combat what is known as "non-take-up", i.e. the number of potential claimants who, for whatever reason, do not apply for the benefit, in particular by means of an information bus which travels the country looking for potential beneficiaries.

□ ***Entitlement to a minimum income is subject to a period of residence:*** Under the MIS, legal and effective residence in Spain for at least the year immediately preceding the date on which the claim is submitted is required in order to access the benefit requested. However, for certain groups, this period is not required. The groups excluded in Article 10 of the above-mentioned regulation are as follows:

1. *Minors incorporated into the cohabitation unit by birth, adoption, family reunification of sons and daughters under guardianship with a view to adoption or permanent placement in a foster family.*
2. *Victims of human trafficking and sexual exploitation.*

3. Women victims of gender-based violence.

Migrants are also eligible, provided that they have been legally resident for the required period. On the other hand, people in a situation of administrative irregularity are not eligible (in accordance with the general provisions of the consolidated text of the General Law on Social Security for all non-contributory benefits).

Regional minimum income schemes also require a minimum period of legal residence. On average, this is also one year. Some require a shorter period (6 months for Galicia and Extremadura), others a longer period (5 years for Melilla).

□ **Right subject to an age criterion:** the spirit of the above-mentioned national minimum income is that it is a benefit designed to prevent poverty and social exclusion, but it is not an emancipation income.

This is why the MIS requires that people who are not members of a cohabitation unit must be at least twenty-three years old. Nevertheless, certain improvements or exceptions to this rule are also established, in which the age condition is not required:

- Women who are victims of gender-based violence or human trafficking and sexual exploitation.
- Persons aged between 18 and 22 who come from residential centres for the protection of minors, having been under the guardianship of public entities during the three years preceding the age of majority. Orphans, provided they live alone and are not part of a cohabitation unit.
- Adults or emancipated minors where certain children or minors are under guardianship.

The regional minimum schemes also have a similar age requirement. 11 regions over 17 require a minimum age of 25, others 23 and still others 18.

□ **Late payment of minimum income:** in accordance with the procedure laid down in the legal regulations, the IMV economic benefit must be paid each month.

The MIS Act provides for a maximum period of 6 months for the resolution of applications. However, since the beginning of 2021, actual resolution times have been reduced to an average of less than two months from the date of application.

Over 1.7 million claims were received, 95% of which were processed. This exceptional circumstance considerably slowed down the time taken to resolve cases and, as a result, the payment of benefits was delayed in some cases.

However, payment deadlines are now being met without delay. A number of updates are currently being made to the management procedure. New management software has been introduced which automates a large part of the procedure, enabling faster resolution.

In addition, a new decentralised management system redistributes applications to INSS offices throughout the country, according to the workload of each office. This means that if a specific region or area has a greater number of applications than others, the national INSS infrastructure distributes the workload among the various offices throughout the country, thus eliminating any delays in these areas.

□ **The level of assistance for a single person with no resources is deemed insufficient:** remember that the VMI was created two years ago (2020), for the entire country, with the possibility of being supplemented by the regions and, therefore, with the possibility of extending coverage to other groups not covered.

Be that as it may, the SIM currently reaches 523,000 households and over four million people (over 40% of whom are children), which implies a substantial improvement in the coverage of vulnerable situations.

This new benefit has a structural purpose within the Spanish social security system, and is not simply intended to alleviate the situation created by the pandemic.

This new benefit represents a major advance on the previous cover. The former was limited in time, but the latter can be extended as long as the situation of vulnerability persists and the requirements that gave rise to the entitlement are maintained.

In addition, the implementation of law 19/2021 represents an improvement on the social protection of the previous era, because :

- The minimum wage has been temporarily increased by 15% in 2022, at the same time as the minimum wage and non-contributory pensions. The increase in the minimum wage represents half a percentage point more than the increase in contributory pensions. This represents an increase of 14% on the initial amount of €461 for a single beneficiary in 2020.

In 2023, the minimum wage will be increased by 8.5% in line with the rate of inflation in Spain.

- The law creates a supplement for beneficiaries with dependent minors in order to strengthen the VMI's ability to combat child poverty. It will cover not only families eligible for the VMI, but also other families with a higher level of income and equity, but who are experiencing child poverty.

- Unemployment benefit or subsidies in any form are not taken into account when calculating income for the current year.

- The cohabitation unit seniority period has been reduced from 12 to 6 months in order to access the benefit. In addition, the independent living accreditation required for people under the age of 30 has been reduced from 3 to 2 years.

- The allowance is calculated on the basis of the current year's income, and income has been increased in the event of progressive or sudden poverty.

Some groups at risk of poverty and social exclusion do not have access to VMI for a variety of reasons. Significant efforts are being made to extend the coverage of economic benefit and improve related social policies to reach these groups.

For regional schemes, the amount for a single person varies from 70% of the public income indicator for multiple effects (€579.02/month in 2022) to 125%, depending on the region.

60. The Chair noted a considerable change in the first three grounds for non-compliance and for this reason he felt that the AG should wait for the next assessment as the new legislation introduced was outside the reporting period.

61. The Spanish representative added that Spain had also introduced a child poverty allowance, giving an extra amount to families with children, and that new policies had introduced job offers and a social inclusion certificate for companies that hire people benefiting from these programmes, as well as active inclusion programmes.

62. The French representative said that the Spanish experience was useful for Bosnian and Czech colleagues and that the CM should consider exchanging information.

63. The Chairman thanked Spain and proposed that the GC conclude on the first three grounds pending the next assessment. He asked the Committee for its opinion on the fourth ground.

64. The representative of the Netherlands asked about regional schemes and whether there were additional benefits for the different regions. The Spanish representative replied that the regions must now comply with the minimum benefits and that they can have additional benefits and

increase the amount or cover beneficiaries who are not included in the benefits. Furthermore, the Spanish policy is not an isolated one, but there are others that are improving the situation, such as the minimum wage, which has risen from 600 to 1000 euros.

65 The Chairman concluded that the GC should wait for the next ECSR assessment.

CSE 1961 13§1 UNITED KINGDOM

66. The ECSR concluded that the situation in the United Kingdom did not comply with Article 13§1 of the 1961 Charter for the following reasons:

- The level of social assistance benefits was inadequate;
- the granting of social assistance benefits to non-nationals was subject to a condition of excessive length of residence.

67. With regard to the first ground for non-compliance, the ECSR considered that the level of social assistance benefits was not adequate, based on information contained in the MISSOC database (data as at 1 July 2019). The ECSR noted that the level fell during the reference period below 50% of the median equivalised income across the country. Personal allowance (basic benefit) paid to a single person over 25 was €82 per week in 2019 (down from €103 in 2015). Supplementary benefits (housing benefit, winter or cold weather heating allowance) were also lower than the amounts paid in 2015. The most recent poverty line, defined as 50% of median equivalised income and calculated on the basis of Eurostat's at-risk-of-poverty value, refers to 2018 and was estimated at €894.33. No information is available for 2019.

68. As regards the second ground of non-compliance, namely that the granting of social assistance benefits to non-nationals is subject to a condition of excessive length of residence, the ECSR found that the 5-year permanent residence requirement for the granting of social assistance benefits to non-nationals is excessive and therefore not in conformity with the Charter.

69. The first ground of non-compliance found by the ECSR concerning the adequacy of the level of social assistance benefits is the first non-compliance. However, the non-compliance on the second ground, concerning the excessive length of residence required for non-nationals to qualify for social assistance benefits, dates back to 2000 (Conclusions XV-1). Specifically, the ECSR concluded, for the reference period referred to, that all welfare claimants, whether British or non-British, were subject to a test of habitual residence which often resulted in the benefit being refused because it could not be proved that an "appreciable" period of residence had been completed. The finding of non-compliance on the same grounds was repeated in 2002 (XVI-1) and 2004 (XVII-1). In 2006 (XVIII-1) and 2009 (XIX-2), the finding was deferred as the ECSR considered the Government's arguments on the habitual residence of UK citizens and requested information on foreign nationals accordingly. In 2013 (XX-2), the UK was found to be compliant in light of explanations regarding derogations to the habitual residence test and the ECSR asked to be informed of any legislative or other developments in this area. In 2017 (XXI-2), the ECSR noted that access to benefits for EEA nationals was restricted, requested information on the rules applicable to non-EEA nationals and the conclusion was again deferred pending receipt of the requested information.

70 As regards the second ground for non-compliance, the GC was concerned about the equal treatment of non-nationals and did not focus on the excessive length of the residence requirement. In 2003, the GC asked the UK to provide full information on the habitual residence test and to ensure that there is no discrimination in its application to non-nationals. In 2005, the GC asked the Government to ensure that the arrangements for determining habitual residence do not discriminate against nationals of other States Parties and decided to await the next assessment of the ECSR.

71. The Chair informed the meeting that the Bureau was asking the GC to agree to disregard the second reason for non-compliance because the legislation in question (which the ECSR considers to be a reason for non-compliance) came into force after the reference period.

72. The representative of the United Kingdom provided the following information:

Introduction

1. *The Council of Europe's European Committee of Social Rights (ECSR) has concluded that the UK was not in compliance with Article 13.1 for the period 2016-19. The ECSR based this conclusion on the following grounds:*
 - i. *the level of social assistance benefits is inadequate; and*
 - ii. *the granting of social assistance benefits to non-nationals is subject to a condition of excessive length of residence.*
2. *This document sets out the UK's response to the ECSR's findings.*

Reason (i)

Introduction

3. *The UK is disappointed with the findings on ground (i) and does not believe that the UK benefits system is inadequate or not in compliance with Article 13(1). This is the first time that the ECSR has found that the UK is not in compliance with Article 13.1 in relation to the adequacy of benefits.*
4. *Over this period, the UK paid the following total benefits:*

<i>billion in real terms, 2022/23 prices⁶</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>
<i>The children</i>	<i>2.3</i>	<i>2.3</i>	<i>2.4</i>
<i>Benefits for people of working age</i>	<i>62.6</i>	<i>64.4</i>	<i>66.9</i>
<i>Retirees</i>	<i>136.2</i>	<i>135.8</i>	<i>135.6</i>
<i>Overall social protection expenditure</i>	<i>201.1</i>	<i>202.5</i>	<i>205.0</i>

Our expenditure on Universal Credit, the new service we introduced as part of these reforms, is as follows:

<i>million pounds sterling in real terms, 2022/23 prices⁷</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>
<i>Universal credit</i>	<i>1,835</i>	<i>3,779</i>	<i>9,075</i>

Overview of welfare reforms

5. *The UK Government believes that the most effective way to tackle poverty is through work, and that this requires a sustainable benefits system that works with the tax system and the labour market to help people enter and progress in the world of work. During this period, the UK Government has had to take decisive action to deal with the difficult fiscal situation following the 2008 financial crisis. In 2012 and 2016, it introduced a number of measures under the Welfare Reform Acts to ensure fairness in the benefits system, encourage work and return to a balanced budget.*
6. *One of these measures is the benefit rate freeze, which was introduced to address the fact that benefits were outstripping earnings growth. This was a temporary measure that ended in April 2020. Since April 2020, benefits in the UK have been revalued in line with inflation. This trend continues following the Chancellor of the Exchequer's Autumn 2022 Tax Statement (17 November 2022), in which the UK Government announced that from April 2023, state pensions and benefits would be revalued by 10.1% in line with UK inflation for September 2022.*

⁶ Source: [Benefit expenditure and caseload tables 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2022) [last access: 17/11/2022].

⁷ Source: [Benefit expenditure and caseload tables 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2022) [last access: 17/11/2022].

Launch of universal credit

7. *This period also saw the introduction of Universal Credit (UC). UC is a universal welfare measure that helps people who can work into work by paying them a Jobseeker's Allowance and supplementing the wages of those on low incomes, as the UK believes that work is the most effective way out of poverty. It also looks after those who cannot work and ensures that those most in need of social protection get the financial support they need.*
8. *People with little or no income who have a health problem or disability that limits the amount of work they can do can also claim UC. They must provide medical evidence to support their claim - most commonly a statement of fitness for work, usually called a 'fit note'. Claimants whose condition or disability persists for four weeks or more enter the Universal Credit health pathway and are referred for a Work Capability Assessment (WCA).*
9. *UC replaces a complicated system in which benefit recipients faced 'cliff edges', i.e. support was lost when they worked more than 16, 24 or 30 hours, making it truly universal. UC supports people on low incomes or out of work and helps to ensure that they are better off in work than on benefits. It provides claimants with the help they need to prepare for work, move into employment or earn more if they are already in work through progression.*
10. *The UK Government has made a number of permanent changes to Universal Credit (UC) since the start of the reporting period. UC in-work benefits were increased in 2019, benefiting millions of working households. The UK Government has also reduced the Universal Credit taper rate from 63% to 55% and increased Universal Credit working allowances by £500 per year. As a result, 1.7 million households will keep, on average, around £1,000 extra on an annual basis.*

Employment support programmes to reduce poverty

11. *The CEDS Digest states the following:*

Linking social assistance to a willingness to seek employment or undertake vocational training complies with the Charter, insofar as these conditions are reasonable and consistent with the aim pursued, which is to find a lasting solution to the individual's difficulties. The reduction or suspension of social assistance benefits can only be consistent with the Charter if it does not deprive the person concerned of his or her means of subsistence (emergency assistance must at least remain available).

12. *The UK argues that UC and employment support schemes are consistent with the Digest argument above and should be considered part of the social assistance offered by the UK.*
13. *Since the period in question, the UK Government has introduced measures to improve incentives to work and programmes to help people into and through work, so that they can increase their incomes and lift themselves out of poverty. With 1.3 million job vacancies in the UK in May 2022, we are firmly focused on helping people into and through work. Our approach is based on clear evidence of the importance of employment, particularly full-time employment, in significantly reducing the risk of poverty.*
14. *The UK's jobs plan has protected, supported and created jobs across the country and will continue to help people find work and develop skills to advance their careers and increase their incomes.*
15. *The UK is also stepping up employment support programmes - Expanding and Improving Internships, with £126 million to increase internships and payments to employers offering internships up to £3,000 per intern. Our three-year Restart programme (introduced in summer 2021) will provide intensive, one-to-one support to unemployed people and help them into work, as well as a Sector Work Academy Scheme (SWAPS) helping people to retrain, re-skill and move into growth sectors such as construction and social care.*
16. *More than 90% of the UK's net job growth since 2010 has been in full-time work and the UK government has given the lowest paid people a pay rise by increasing the National Living Wage by 6.6% to £9.50, one of the highest wages in the world, and by making permanent changes to Universal Credit, worth £1,000 a year on average to 1.7 million people in work.*
17. *The latest available data on in-work poverty shows that in 2019/20, working age adults in households where all adults work are six times less likely to be in absolute poverty (after housing costs) than adults in*

a household where no one works and that there is only a 3% chance of children being in poverty (absolute, before housing costs) when both parents work full time, compared to 42% when one or more parents in a couple work part time. We know that work is the best way for people to get by, improve their lives and support their families, as people are at least £6,000 better off in full-time work than unemployed and on benefits.

Poverty in the UK

18. *It is widely accepted that there is no single perfect way to measure poverty and that a range of different measures should be used. The UK government's preferred approach is to use absolute low incomes. The measures in the Below Average Income series include both relative and absolute poverty and are similar to those produced in EU and OECD countries. The UK has a statutory commitment to report this data annually.*
19. *In 2019/20 there were 700,000 fewer people in absolute poverty after housing costs compared to 2016/17. In 2019/20, there were one million fewer people in absolute poverty after housing costs compared to 2015/16, showing that welfare reforms and return to work have been effective over this period.*
20. *The number of people in absolute poverty has fallen overall. There was a slight increase from 12.4 million to 12.8 million over the period 2016-19, but this was followed by an immediate fall to 11.7 million in 2019-20 and a further fall to 11.1 million in 2020-21. When it was introduced, Universal Credit was introduced using a 'test and learn' approach and the system has been updated to help those most in need.*
21. *These measures suggest that Universal Credit, combined with more employment support programmes and an increase in the National Living Wage, has had the desired effect of helping people into work to reduce poverty.*

Additional employment aid

22. *The UK also offers other forms of social assistance to people who are caring for a relative or who are unable to work, as part of the package of benefits available.*

Supporting childcare

23. *The UK government also offers generous childcare benefits. In 2017, the UK government doubled free childcare for three- and four-year-olds for working families from 15 to 30 hours a week, a total value of up to £6,000 per child per year for eligible working parents. By January 2022, almost 350,000 children were benefiting from 30 hours of free childcare. The UK government has also introduced tax-free childcare, which provides working parents with childcare support of up to £2,000 per year per child (£4,000 for disabled children). Working UC households are also eligible for 85% of their childcare costs.*

Supporting people with disabilities

24. *People with little or no income and a health condition or disability that limits their ability to work are also eligible for Universal Credit. Claimants whose health condition or disability persists for four weeks or more will enter the Universal Credit health pathway.*
25. *The UK benefits system also provides a number of other benefits for people, including maternity pay, industrial injury benefit, a monthly universal child benefit payment, a range of disability benefits and a new-style employment and support allowance (NS ESA) for people whose disability or health condition affects the number of hours they can work.*
 1. *The UK government also provides benefits for carers, as well as paying Disability Living Allowance to disabled children and adults. The UK government funds the Personal Independence Payment, which helps people meet the ongoing costs associated with their disability. The allowance has increased by £1,170 a year since it was introduced in 2013. The proportion of people receiving the highest rates of Personal Independence Payment is higher than the proportion receiving Disability Allowance (35% compared with 16% since 2010).*
26. *The state provides benefits to help people meet the ongoing costs of their disability. New-style Employment and Support Allowance (NS ESA) is for people whose disability or health condition affects the number of hours they can work.*

Assistance with accommodation costs

27. *On housing, the UK Government has maintained the increase in Local Housing Allowance rates for private tenants on Universal Credit and Housing Benefit in cash terms in 2021-22 and rates remain at these levels in 2022/23. This increase amounted to an extra £600 on average in 2020-21 for over 1.5 million people. In addition, the UK Government has made £100 million available for Discretionary Housing Payments for people eligible for housing benefit who need extra help. Since 2011, the government has paid out nearly £1.5 billion in Discretionary Housing Payments.*

Current situation

28. *Reforms to the UK's welfare system have made it more flexible and, in the wake of the COVID-19 pandemic, have helped people cope with the rising cost of living:*

- *provide £37 billion of extra help to people affected by the cost of living this year (2022) for recipients of benefits and some universal support for UK households.*
- *Thanks to new measures announced in May 2022, almost all of the eight million most vulnerable households will receive a one-off payment of £1,200 this year.*

29. *In 2020/21, there were 1.2 million fewer people in absolute poverty before housing costs than in 2009/10, including 200,000 fewer children, 500,000 fewer working-age adults and 400,000 fewer pensioners. These figures show that our temporary emergency interventions to support the lowest income households during the pandemic worked and demonstrate once again that the UK welfare system is flexible to meet the demands of the moment.*

Summary

30. *These explanations show not only that welfare reforms were necessary in response to the 2008 financial crisis. They also show how UC, combined with employment support programmes, helps people to work, which is the best way out of poverty. These measures are in addition to a range of other benefits which, as in other countries, support people who are unable to work and provide them with the social protection they need. The UK is taking these points on board and is asking members to review its welfare package to ensure that it complies with Article 13.1.*

Reason (ii)

Introduction

31. *The ECSR concluded that the UK was not in compliance with Article 13(1) on the grounds that (ii) the grant of social assistance benefits to non-nationals was subject to an excessive residence requirement. The ECSR found that the permanent residence requirement of five years for the granting of social assistance benefits to non-nationals was excessive and therefore not in conformity with the Charter.*

32. *The ECSR suggested as a possible recommendation that the UK should "significantly reduce the length of residence required for non-nationals claiming welfare benefits".*

Historical background

33. *The working paper on findings of non-compliance 145th suggests that the UK has a long history of non-compliance on this ground because the ECSR found, for the reference period referred to, that all welfare claimants, whether British or non-British, were subject to a test of habitual residence which often resulted in a refusal of benefit because of the inability to prove completion of an "appreciable" period of residence. The finding of non-compliance on this ground was reiterated in 2002 (XVI-1) and 2004 (XVII-1).*

34. *In 2006 (XVIII-1) and 2009 (XIX-2), the conclusion was postponed. The ECSR had taken into account the UK's arguments on the habitual residence of UK citizens and had requested information on foreign nationals accordingly.*

35. *In [2013 \(XX-2\)](#), the ECSR concluded that:*

*In the light of the explanations and examples of case law provided, the Committee considers that **the "habitual residence" test, as applied in the United Kingdom, complies with the Charter.** It nevertheless asks to be kept informed of any legislative or other developments in this area, as well as of any relevant*

data concerning successful and unsuccessful claims, in relation to entitlement to social and medical assistance benefits. [emphasis added].

36. *It is therefore clear that the description of this long-standing case of non-compliance is incorrect. The second ground concerns the period of permanent residence required to apply for indefinite leave to remain and be 'settled' in the UK. This is the "non-use of public funds" condition applied to other immigration statuses. This is a separate issue and should be treated as such. It is not a long-standing non-compliance. The Committee asked to be kept informed of any legislative or other developments in this area.*

Procedural considerations

37. *The information provided relates to changes made in 2021, outside of the 2016-2019 reporting period. It has been provided to inform the DACS of impending changes in line with reporting requirements.*

38. *Therefore, it is **not** procedurally correct for the ECSR to reach a conclusion on UK compliance on the basis of information that does not relate to the reference period. A deferral of the decision until the next report would be more appropriate. Nor is it procedurally correct for the Government Committee to consider this conclusion at this stage. Any consideration should take place at the same time as the report covering the next reporting period.*

Conclusion

39. *In relation to ground (i), we do not agree that the UK is non-compliant in relation to adequacy of benefits, as the evidence shows that our approach to tackling poverty through multiple social protection measures, including stimulating employment, works. The UK Government has demonstrated, during and since this period, its commitment to meeting the needs of the UK's most vulnerable households and provides a broad and generous social safety net for those in need.*

40. *With regard to ground (ii), we do not believe that the Committee should make a recommendation as this issue falls outside the 2016-19 reporting period.*

73. The Chair concluded that although the UK believes it is compliant, the document provided shows that the amount of benefits has decreased and there is no information on the figures for 2019.

74. The UK representative replied that this was all part of a wider framework, which was not clear because of the way the reports were written, and that it might help the ECSR if it addressed the issue in the report. In the Chairman's view, if there has been an adjustment to benefits during inflation, this is accepted, but benefits should have been increased, not reduced. The UK representative referred to the table presented, which showed that there had been an increase in benefits over and above the increase in wages, and steps had been taken to bring benefits into line with inflation figures. The ETUC representative took the floor, expressing puzzlement at the information provided by the UK, which was not currently available.

75. The Chairman added that the information had not been sent to the Secretariat and that it was difficult to access when the figures were given during the meeting. The Secretariat clarified that it did not consider that the issues raised in the written and oral presentation constituted additional information that could change the ECSR's conclusions. The representative of the United Kingdom replied that he did not have the methodology to verify the statistical information. The idea of Universal Credit is a benefit that encourages people to go into work because it is the best way for people to become able to support themselves and to encourage progression into work. In addition, he reiterated that the UK would clarify everything in the next report.

76. The French representative thanked his British colleague and asked how Universal Credit would be maintained or improved under the new budgetary constraints announced by his own Chancellor. The UK replied that the most vulnerable are protected and that there is a discussion on burden sharing, which means that these issues are being addressed and taken into account.

77. The Chairman concluded that he hoped the ECSR would come to a positive conclusion next time. The GC agreed to wait for the next ECSR assessment.

Article 13, paragraph 4

78. The beneficiaries of this right to emergency social and medical assistance are foreign nationals who are legally present in a given country but who do not have resident status. By definition, the right to emergency aid cannot be subject to any condition of length of presence.

79. States Parties are obliged to provide destitute non-resident aliens - whether in a regular or irregular situation - with emergency social and medical assistance (accommodation, food, emergency care and clothing) to meet a state of urgent and serious need (without interpreting the criteria "urgent" and "serious" too restrictively). They are not obliged to apply the guaranteed income provisions as part of their social protection system. The provision of free emergency medical care must be governed by the particular state of health of the individual. Migrant minors in an irregular situation in a country have the right to receive health care that goes beyond urgent medical assistance and includes primary and secondary care, as well as psychological assistance.

80. Under Article 13§4, two States Parties have been found to be in violation of the Charter on the grounds that all non-resident foreign nationals in need who are legally present in the territory are not entitled to emergency social assistance (Croatia and Montenegro).

ESC 13§4 Croatia

81. The ECSR concluded that the situation in Croatia did not comply with Article 13§4 of the 1961 Charter on the grounds that not all non-resident foreign nationals in need who are lawfully in the country are entitled to emergency social assistance.

82. The report states that non-resident foreign citizens in need, in accordance with the applicable national regulations, are entitled to health care. However, access to basic social assistance is only available to citizens, residents or persons enjoying international protection. The Committee therefore considered that the situation still did not comply with the 1961 Charter.

83. The ECSR found non-compliance with Article 13(4) for the first time in 2009 (conclusions XIX-2) and again in 2013 (conclusions XX-2), while in 2006 it postponed its conclusion pending the information requested.

84. The GC reviewed the situation in 2010 and invited the Government to provide all relevant information in its next report and decided to wait for the next ECSR assessment. In 2014, written information was provided by the government, but was not discussed.

85. The representative of Croatia presented the following information:

*Under the new Social Welfare Act (Official Gazette, No. 18/22, 46/22), the **benefits and services of the social welfare system, under the conditions laid down by this Act, may be recognised or approved:***

- a foreign national with permanent, long-term residence in Croatia,
- a stateless person with temporary, permanent and long-term residence in Croatia,
- a foreign national benefiting from subsidiary protection and asylum seekers and their family members legally resident in the country.
- a foreign national with established status as a victim of human trafficking.

*Exceptionally, the right to a **one-off allowance** and the **right to accommodation** may also be granted to a person who is not on the list if the circumstances of the person's life so require.*

*For example, the new law on social protection has **extended the circle of people who are eligible** for approved benefits and services, based on their citizenship, residence and place of residence, to*

include foreigners who have been long-term residents of Croatia and stateless persons who have been temporary or long-term residents of Croatia, who were not previously covered.

*Emergency social assistance as such is not recognised in the legal regulations, but a **specialised worker from the social assistance centre** (Croatian Social Assistance Institute) **provides the first social service on first contact with a user** who has not yet been recognised as having a right in the social assistance system, i.e. if no measures or actions have been taken by the Institute or if more than six months have passed since the user was taken into care, and the user applies for the same or new needs, within the framework of which he or she can initiate urgent interventions in the event of a threat to security and/or basic vital needs.*

*Any person who is unable to **meet** their basic needs due to extraordinary expenses arising from everyday circumstances (birth or education of a child, illness or death of a family member, natural disaster, etc.).*

*In addition, this law prescribes **accommodation services** in crisis situations, i.e. in situations where a person's life, health or well-being is threatened, and may also be granted to a child without adequate parental care, a child or a young adult with behavioural problems, a child who becomes a vagrant, an unaccompanied child, a foreign citizen or stateless person, a child whose parents are temporarily unable to care for them due to illness, an unresolved housing problem or another adversity in life, a pregnant woman or a parent with a child under the age of one who does not have a flat or safe accommodation or who, because of disrupted family relationships, cannot stay with their child, a victim of domestic violence, a victim of human trafficking, an adult who is away from his or her place of residence, or a person who has no place of residence, or who is unable to care for himself or herself, an adult whose life is in danger because of illness, infirmity, drug addiction, social exclusion or other circumstances, and a person of no fixed abode.*

86. The Chairman asked when the legislation came into force and the representative replied that it came into force at the beginning of this year.

87. The Secretariat noted that protection should be provided to any foreigner and not only to the categories mentioned. The representative of Croatia replied that all citizens or non-citizens in need of emergency care receive it.

88. The ETUC representative asked for clarification on the law, in particular on the "one-off compensation" and on the number of people benefiting from accommodation services. The Croatian representative had information on the first question (1327 euros), but not on the second. The Croatian representative pointed out that this was emergency social assistance and not long-term social assistance.

89. The ETUC representative asked whether only some of the non-nationals on the list were treated in the same way and whether others, who were not on the list, were treated differently, which was what the ECSR had identified. The Secretariat replied that Croatia treats categories of people with residence permits in the same way as citizens, but not those without residence permits. The extension of the group of people benefiting from assistance is therefore irrelevant. The Chairman concluded that the new law would not remedy the situation and therefore did not solve the problem identified by the ECSR. He asked about legally resident foreigners who are not resident. According to the Croatian representative, emergency medical care is accessible to all in this case.

90. The Chair suggested that Croatia provide more details in the next report. The representative of Belgium asked whether the information provided to the GC in 2014 contained answers to the questions. The Chair replied that the most serious cases were discussed at that time and not this particular item. The situation had not changed since then until now, in 2022, when a new law was passed.

91. It was decided to ask Croatia to provide the relevant information in the next report and to wait for the next ECSR assessment.

ARTICLE 14, PARAGRAPH 1

92. The Secretariat pointed out that Article 14§1 is one of the provisions for which the case law of the ECSR is not very developed beyond the wording of the article. The ECSR has defined the material scope of application as including social services in the form of counselling, home assistance, hygiene, meal delivery, etc. The individual right of access must be guaranteed by law. The individual right of access must be guaranteed to any person likely to need it. It may be organised according to eligibility or pricing criteria, but not excessively so. Under no circumstances should it apply to a minimum monthly income. It is about advice and assistance. As far as the personal scope is concerned, it should cover all people facing social needs, without being based on economic needs. The people most likely to be affected belong to certain groups: families, delinquents, the elderly, the disabled, etc. As far as foreigners are concerned, the ECSR is based on the appendix to the charter, according to which legal residents and nationals of another party to the charter are treated equally.

93. The Secretariat explained that overall, during the 2021 review cycle, access to social services by nationals of other States Parties was problematic. The problem of restrictive access to these services by foreigners remained in Azerbaijan, the Czech Republic, Hungary, Latvia, Poland, Serbia and Türkiye (the Czech Republic, Serbia and Türkiye had a finding of non-compliance on this ground for the first time). Only long-term non-compliances are considered in this case.

ESC 1961 14§1 Poland

94. The ECSR concluded that the situation in Poland did not comply with Article 14§1 of the 1961 Charter on the grounds that access to social services by nationals of other States parties was subject to an excessively long residence requirement.

95. The problem of the excessive length of the residence requirement (five years of uninterrupted residence) for access to social services by nationals of other States Parties was already discerned by the Committee in 2005 (Conclusions (XVII-2)). In its current assessment, the ECSR noted that during the discussion of the situation of non-compliance by the Governmental Committee in 2018, the Polish representative recalled the provisions in force and indicated that the Ministry of Family, Labour and Social Policy had not received any signals from the local or regional administration indicating the need to amend the personal scope of application of the Social Assistance Act. Nor had such needs been signalled by other institutions, including those responsible for the status of foreigners in Poland. The ECSR observed that the GC took note of the information provided by the representative of Poland and decided to wait for the Committee's next assessment.

96. The ECSR also noted in the 2021 report that no amendments had been made to the Social Assistance Act during the reference period. According to the Government, Article 14§1 clearly indicates that this concerns the State's obligation to ensure the effective functioning of the social assistance system within which the rights provided for in Article 13 may be exercised. According to the Government's interpretation, Article 14§1 does not mention any conditions or guarantees for access to social assistance (social benefits) or social services. The ECSR took note of the explanations and firmly reiterated that imposing an excessively long period of residence (5 years) is contrary to the Charter (Conclusions XVII-2, Poland) and therefore reiterated its conclusion of non-conformity.

97. The problem dates back to 2005 and this is the fifth finding of non-compliance for this reason (2005, 2009, 2013, 2017 and 2021). The situation has not changed. The GC reviewed the situation in 2006, 2009, 2014 and 2018. On each occasion, it took note of the information provided and decided to wait for the next ECSR assessment.

98. The Polish representative provided the following information:

"General remarks

Article 14(1) concerns the existence and operation of institutions providing social services, thus enabling Article 13 to be implemented. The wording of Article 14 in no way indicates that an individual right to social services could result from it.

The forms and conditions of access to social assistance benefits are set out in Article 13. Paragraph 1 of this article concerns cash benefits, and paragraph 3 deals with services such as counselling and personal assistance to prevent, abolish or alleviate personal and family needs.

There is therefore no need to fill supposed gaps in the Charter by interpreting Article 14 in such a way as to require States to guarantee an "individual right of access to services".

It should be recalled that the discussion on the implementation of Article 14 para 1 held by our Committee in 2018 noted States' objection to the interpretation of this article proposed by independent experts. It was pointed out that it goes far beyond the text of the provision and that its context had been omitted. Furthermore, the only justification for such an interpretation would be the assertion that the Charter must be interpreted in this way in view of "general legal requirements" and the concept of a "living treaty".

The Government Committee asked its office to discuss the matter with the office of the Committee of Independent Experts, which happened in 2019. According to the bureau members' report, the independent experts did not detail the interpretation or give any justification beyond what was previously known.

Poland declares that it is taking all necessary measures to ensure the correct implementation of Article 14 para 1, given its original scope, i.e. concerning the operation of social services.

The Committee of Independent Experts has so far confirmed this assessment, with the exception of the issue of free access to services, due to a lack of precise information in the report.

As for access to social services

Access to social assistance institutions for all persons present in Poland, regardless of their residency status.

This does not mean, however, that they will always receive help in the form of social assistance benefits. Access to benefits is subject to the conditions set out in the law on social assistance.

Even if the conditions for entitlement to social assistance benefits are not met, the social assistance institution will be able to provide any person who applies to it with information on their rights and the forms of assistance available.

In this way, the institution will be able to indicate the possibilities for obtaining the services of another institution, for example, how to obtain social insurance and family benefits.

The social assistance institution may also list NGOs that help people in need.

Finally, in the case of foreign nationals, it can point them in the direction of the consular mission of their country of origin, which is dedicated to helping them in a time of need, including providing emergency financial assistance.

In principle, the granting of social assistance benefits takes the form of an administrative decision taken by a local authority body.

If an individual disagrees with the decision, he or she may appeal to the Local Government Appeals Commission. The decision of such a commission may be appealed to the voivodship administrative court.

As for access to the benefits offered by social assistance institutions - as called for by independent experts

Access to social assistance benefits is subject to the conditions set out in the Social Assistance Act.

The main condition is a difficult life situation, particularly financial, family or health-related.

With regard to foreign nationals, additional conditions are set out in the law on social assistance in combination with the law on foreign nationals and the law on the entry into, stay in and departure from the territory of the Republic of Poland of citizens of Member States of the European Union and their family members.

To be entitled to social assistance benefits, foreign nationals must hold one of the specified residence permits.

This condition does not apply to spouses and children of a Polish citizen who are either entitled to benefits individually or as family members of a Polish citizen, regardless of the type of residence permit they hold.

Social assistance benefits are available to foreign nationals residing in Poland and :

- holders of a permanent residence permit,*
- holders of a long-term resident's permit from the European Union,*
- beneficiaries of international protection, regardless of their residency status,*
- victims of human trafficking,*
- citizens of the Member States of the European Union, the European Free Trade Agreement and Switzerland, with one exception.*

Obtaining a permanent residence permit or a long-term resident's residence permit from the European Union may require a waiting period.

During this period, foreign nationals may or may not be entitled to social assistance benefits.

There are three groups of foreign nationals who are not entitled to social assistance benefits while waiting for a permanent residence permit or a long-term resident's residence permit from the European Union. This waiting period is 5 years, but there are cases where it is shortened (3 years). The first group are British nationals who, until 31 December 2020, worked in Poland as employees delegated by a foreign employer. They were able to remain in Poland after this date and are entitled to continue working in Poland under any title. To date, 15 people are staying in Poland in this capacity.

The second group are inactive EU citizens or students and members of their families. The conditions for their access to benefits derive directly from European Union law. Although the Charter and EU legislation are separate legal orders, the content of the provisions on access to social assistance benefits for inactive EU citizens could provide food for thought on the scope of social assistance rights under the Charter.

The third group are non-EU nationals staying in Poland on the basis of a temporary residence permit. There are a total of 19 different temporary residence permits adapted to different reasons for residence.

Apart from those who come on the basis of permits that do not allow them to stay for more than a few weeks or even days, who are by definition occasional and have no intention of settling in Poland, there are still people who come to Poland to work, carry out an economic activity or study and who, one day, decide to settle in Poland. During their stay, these people are destined to earn their living by working, or else they have other means of subsistence, such as study grants or pensions.

The general condition for obtaining any kind of temporary residence permit in Poland is proof of having the means to support oneself, without recourse to social assistance benefits. This condition is based on the assumption that social assistance benefits should only be paid to people who are genuinely in need and, despite their efforts, are unable to remedy their situation. And, secondly, these people must have their centre of life in Poland.

These conditions were introduced mainly to avoid social tourism, i.e. to prevent the arrival of people whose intention is to live on public funds.

Performance of social assistance institutions

To illustrate what the Polish social assistance system guarantees in terms of benefits for people in need and the performance of social assistance institutions, information on recent events is needed. Since the start of the war in Ukraine, almost 8 million Ukrainians have crossed the Polish border, the majority of them women, children and the elderly. At present, almost 2 million Ukrainians are staying in Poland.

The law of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that State granted Ukrainians the right to stay in Poland for 18 months, with the possibility of extending this stay up to 3 years. The law guarantees financial assistance: a single special benefit, the right to all family and social assistance benefits under the same conditions as

those applicable to Polish citizens. Ukrainian citizens have the right to work in Poland without a work permit.

Currently 1.5 million Ukrainian citizens are entitled to social assistance benefits. Up until mid-November, 1.1 million one-off subsistence benefits were paid out, and around 0.5 million childcare benefits (known as the 500+ benefit) were paid monthly, not including other family allowances.

Refugees have access to social services. At the same time, a system of social services has been set up to meet the specific needs of refugees.

Day centres organised mainly by municipalities and NGOs offer assistance such as psychological support, language courses, childcare and emergency aid.

The local authority is responsible for managing psychological support services, alongside the psychiatric and psychological care provided as part of the health care system.

The evacuation of children placed in care in Ukraine has been organised. Unaccompanied children have also come to Poland. All these children are guaranteed accommodation, care, education and legal protection.

Ukrainian citizens can benefit from all forms of support provided under the law on combating domestic violence.

Disabled people are entitled to care and services according to their needs, free of charge, as well as to cash benefits related to their disability.

This information proves that Poland is able to provide the necessary assistance to people whose situation of distress justifies the right to social assistance provided by the State.

To sum up:

We consider that we are taking all the necessary measures to ensure the implementation of Article 14 para 1 correctly given its original scope, i.e. relating to the organisation and operation of social services, their geographical distribution and the qualifications of social workers.

Everyone has access to social assistance institutions. Even if an individual does not qualify for social assistance benefits, he or she will not remain without help. As already mentioned, the social assistance institution will be able to explain to the individual the possibilities of remedying his or her situation by other means and with the help of other institutions.

What's more, Poland is able to take measures to deal with large-scale, long-term emergencies. "

99. The representative of Poland stated that it seemed to her that the interpretation of the ECSR called for two parallel systems of social protection, one in accordance with Articles 12 and 13 and the other in accordance with Article 14. She felt that Poland was providing sufficient assistance and that perhaps the details provided under Article 13 should be provided under Article 14.

100. The Chairman said that Article 14 focused on advisory services. Mr Kristensen said that the information provided confirmed the image that the ECSR had. He also thanked for the help given to Ukrainian refugees. He added that the existence of Articles 13 and 14 did not mean that there had to be two different systems; everything could be provided by a single system. He reiterated that the case law on Article 14 is not particularly well developed, in particular, there are no conclusions on the specific services that are insufficient or lacking, they focus on foreigners.

101. The GC voted on a recommendation which was not adopted (12 in favour, 5 against and 21 abstentions).

102. The conclusion was that the GC should obtain clarification on Article 14 and that the Bureau would discuss this with the ECSR.

ARTICLE 23

103. The Secretariat stated in its introduction that only countries that do not have specific legislation to combat possible discrimination against older people were selected, and there are only four of them.

104. Article 23 (or Article 4 of the Additional Protocol of 1988) requires the adoption or encouragement, either directly or in co-operation with public or private organisations, of appropriate measures designed in particular :

1. to enable older people to remain full members of society for as long as possible, by :
 - a. adequate resources to enable them to lead a decent life and to participate actively in public, social and cultural life ;
 - b. the provision of information on the services and facilities available to older people and their opportunities to use them;
2. to enable elderly people to freely choose their lifestyle and lead an independent life in their familiar surroundings for as long as they wish and are able to do so, by means of :
 - a. the provision of accommodation suited to their needs and state of health, or appropriate support in adapting their accommodation;
 - b. the health care and services necessary for their condition ;
3. to guarantee elderly people living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 4 of the Additional Protocol of 1988 Denmark

105. The ECSR concluded that the situation in Denmark does not comply with Article 4 of the 1988 Additional Protocol to the 1961 Charter, on the grounds that there is no legislation prohibiting discrimination on grounds of age outside employment.

106. The previous conclusion was postponed (Conclusions XXI-2 (2017)) pending information on the existence of non-discrimination legislation or case law prohibiting age discrimination outside the sphere of employment. In 2013, the conclusion was non-conformity because it had not been established that there was an adequate legal framework to combat age discrimination outside employment (Conclusions XX-2, 2013).

107. This non-compliance dates back to 2009 with regard to the adequate legal framework to combat age discrimination outside employment. The GC examined the follow-up to the 2009 (in 2010) and 2013 (in 2014) conclusions. In both cases, it took note of the information provided and decided to wait for the next ECSR assessment.

108. The representative of Denmark continued with the statement also submitted in writing:

"The Danish government condemns all forms of illegal discrimination and supports the effective application of human rights.

We have taken due note of the findings on non-compliance.

[The interpretation of the relevant provisions]

However, the Danish position is that current legislative and institutional measures comply with the relevant provisions of the Social Charter. A recent study also shows that age discrimination is low in Denmark compared to other countries.

But let me start with a general observation. The preamble to the Social Charter states that the enjoyment of social rights must be ensured without discrimination, without however making explicit reference to age in its list of criteria.

The 1988 Additional Protocol only requires appropriate measures to enable older people to remain full members of society for as long as possible. We note that legislative measures are not covered.

The choice of appropriate measures must therefore be left to the discretion of each Member State, taking account of national circumstances.

the principle of non-discrimination].

Let me now turn to how we ensure that we do not discriminate against older people in Denmark. In Denmark, we are committed to the principle of non-discrimination set out in Article 14 of the European Convention on Human Rights (ECHR).

Non-discrimination is a fundamental principle of public law in Denmark. The principle of administrative equality is central to the public sector.

This principle is intended to ensure that, as a general rule, identical decisions are taken if the essential elements of the different cases are the same. Public authorities are therefore not permitted to discriminate on the basis of a person's age.

However, it is generally accepted that a difference in treatment may, in certain cases, be lawful if it is justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary, in accordance with the principle of proportionality.

[Provisions relating to age and age thresholds].

In Danish legislation, age provisions and thresholds are used to grant special rights to specific age groups.

Allow me to cite a few examples.

Provisions relating to age can be found in the Health Act, which stipulates that a service must be offered to a certain age group. In other cases, the Health Act stipulates that a service may not be offered to a certain group. However, the specific age restriction is always justified on legitimate medical grounds.

In insurance, actuarial factors and age-related risk factors are also used. These factors should not be regarded as discrimination, as they are essential to risk assessment.

The Danish Government therefore considers that the provisions laying down specific age conditions are based on legitimate, proportionate and necessary objectives in order to guarantee, inter alia, special measures for the elderly in order to prevent or compensate for disadvantages associated with old age. Consequently, these provisions should not be considered as discrimination.

In other areas, measures have been put in place to enable the elderly to lead an independent life. For example, it is regulated that if you accept electronic means of payment (such as credit cards) as a beneficiary, you are also obliged to accept cash.

It is also a way of enabling the elderly to remain full members of society for as long as possible, in accordance with Article 4 of the 1988 Additional Protocol to the 1961 Charter.

[Age discrimination]

In addition, age discrimination in Denmark is low compared to other countries. In 2021, the WHO published a world report on ageism, which was also mentioned in the conclusions of the European Committee of Social Rights.

In a separate survey of 25 European countries, Denmark stood out as having the lowest level of perceived age discrimination (against people aged 55 and over): 80% of respondents said they had rarely or never experienced discrimination.

This result is in line with the Danish policy response to the COVID-19 pandemic, where the elderly in general were given priority in terms of vaccination due to the higher risk for these age groups.

[Conclusion]

In conclusion, the Danish position is that the current measures are both sound and sufficient to enable our citizens, including the elderly, to remain full members of society for as long as possible, while guaranteeing their rights.

109. The Secretariat (Mr Kristensen) took the floor and said that it understood that Denmark had its own interpretation of the Charter and the Protocol, but that this was not decisive for the General Assembly and the ECSR, because the legal interpretation was made by the ECSR. He emphasised that this is a long-standing non-conformity, which many other human rights bodies are calling for and that, from the ECSR's point of view, it is an anchor for guaranteeing rights and combating discrimination.

110. The President asked Denmark whether there was any legislation for older people who were no longer in the labour market. She replied that she would like to encourage the Secretariat to provide information on what other Member States are doing in this regard and to share good practice, as she

did not know at present what the new government was going to do in terms of strategy. The French representative said that France was also faced with an ageing population and that it was necessary to combat discrimination. It was also important to have a strategy for these vulnerable people, and she would also like best practice to be shared and compared. She added that the GC could vote on a recommendation to be forwarded to the CM, which would include the need to share best practice.

111. The representative from Denmark said that there was no government at the moment, but that the previous government was working on legislation in this area and that many political parties were still interested in its development. There is care for the elderly and minimum services that are offered after a certain age. There is also a general rule that the provision of social services is always based on individual needs and the type of assistance that the individual requires.

112. The ETUC representative thanked for the explanations, noted that this was a long-standing non-compliance, that no changes had been introduced, that it was not certain that a new government would pick up where the previous one left off, but given that it was outstanding, the recommendation as proposed remained valid and he would also add best practice of what could be done in addition to the legislation in place.

113. The Chairman said that he understood that Denmark was working on non-discrimination of the elderly, but that the objectives of the new government were not yet known, and that he was therefore proposing the recommendation to continue working in the same direction. The Danish representative said that the draft legislation concerned care for the elderly and that if the CG felt that a recommendation should be made, she would go back to the new government with the draft to present it.

114. The Secretariat (Mr Kristensen) replied that it thought a recommendation would be stimulating for all concerned and that the Secretariat would work on best practice to provide guidelines. The representatives of Ireland and the Netherlands supported the suggestion of sharing best practice as the way forward, as also proposed by the Danish representative.

115. The President asked whether the GC agreed to draft a recommendation that would also include the need for enhanced dialogue. The vote being 22 in favour, 2 against and 10 abstentions, the recommendation was adopted.

ARTICLE 30

116. The Secretariat recalled that States Parties should demonstrate that the reduction of poverty and social exclusion is an integral part of all relevant strands of public policy. The comprehensive and coordinated approach must link and integrate policies in a coherent manner, going beyond a purely sectoral or target group approach. Coordination mechanisms should normally be provided, including at the level of the provision of assistance and services to people living in poverty or at risk of poverty.

117. The ECSR takes into account a series of indicators in order to assess more accurately the effectiveness of the policies, measures and actions undertaken by the States Parties as part of this comprehensive and coordinated approach. One of the key indicators in this respect is the level of resources (including any increase in this level) that have been allocated to achieve the objectives of the strategy, as "adequate resources are an essential element in enabling people to become self-sufficient".

118. In addition, the main indicator used to measure poverty is the relative poverty rate (which corresponds to the percentage of people living below the poverty line, set at 60% of the median equivalent income).

119. The ECSR stresses the very close link between the effectiveness of the right recognised by Article 30 of the Charter and the enjoyment of the rights recognised by other provisions, such as the

right to work (Article 1), access to health care (Article 11), social security benefits (Article 12), social and medical assistance (Article 13), the benefit of social protection services (Article 14), the rights of persons with disabilities (Article 15), social protection, social, legal and economic protection of the family (Article 16) and of children and young people (Article 17), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex (Article 20), the rights of the elderly (Article 23) and the right to housing (Article 31), not forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.

120 Therefore, in addition to the indicators mentioned above, the ECSR also takes into account, when assessing compliance with Article 30, national measures or practices that fall within the scope of other substantive provisions of the Charter. This approach does not mean that a finding of non-compliance or a decision to violate one or more of these provisions automatically or necessarily entails a violation of Article 30; but such a finding or decision may, depending on the circumstances, be relevant for assessing compliance with Article 30.

121. The Secretariat recalled that overall, during the 2021 review cycle, access to social services by nationals of other States Parties was a problematic issue. The problem of restrictive access to these services by foreigners remains in Azerbaijan, the Czech Republic, Hungary, Latvia, Poland, Serbia and Türkiye (the Czech Republic, Serbia and Türkiye received a finding of non-compliance on this ground for the first time).

ANNEX I
LIST OF PARTICIPANTS

- (1) 144^e meeting, hybrid, 30 May-3 June 2022
(2) 145^e meeting, hybrid, 21-25 november 2022

List (1)

List of participants

Meeting - 30 May - 3 June 2022 / Réunion - 30 mai - 3 juin 2022
Hybrid form

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ANNEX II TABLE OF SIGNATURES AND RATIFICATIONS

The **dates on a dark blue background correspond to** the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 Revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already being applied.

X State that has recognised the right of national NGOs to lodge collective complaints against it.

Member States	Signatures	Ratifications	Acceptance of the collective complaints procedure	
Albania	21/09/1998	14/11/2002		
Andorra	04/11/2000	12/11/2004		
Armenia	18/10/2001	21/01/2004		
Austria	07/05/1999	20/05/2011		
Azerbaijan	18/10/2001	02/09/2004		
Belgium	03/05/1996	02/03/2004	23/06/2003	
Bosnia and Herzegovina	11/05/2004	07/10/2008		
Bulgaria	21/09/1998	07/06/2000	07/06/2000	
Croatia	06/11/2009	26/02/2003	26/02/2003	
Cyprus	03/05/1996	27/09/2000	06/08/1996	
Czech Republic	04/11/2000	03/11/1999	04/04/2012	
Denmark	* 03/05/1996	03/03/1965		
Estonia	04/05/1998	11/09/2000		
Finland	03/05/1996	21/06/2002	17/07/1998	X
France	03/05/1996	07/05/1999	07/05/1999	
Georgia	30/06/2000	22/08/2005		
Germany	* 29/06/2007	29/03/2021		
Greece	03/05/1996	18/03/2016	18/06/1998	
Hungary	07/10/2004	20/04/2009		
Iceland	04/11/1998	15/01/1976		

Ireland		04/11/2000	04/11/2000	04/11/2000	
Italy		03/05/1996	05/07/1999	03/11/1997	
Latvia		29/05/2007	26/03/2013		
Liechtenstein		09/10/1991			
Lithuania		08/09/1997	29/06/2001		
Luxembourg	*	11/02/1998	10/10/1991		
Malta		27/07/2005	27/07/2005		
Republic of Moldova		03/11/1998	08/11/2001		
Monaco		05/10/2004			
Montenegro		22/03/2005	03/03/2010		
Netherlands		23/01/2004	03/05/2006	03/05/2006	
Northern Macedonia		27/05/2009	06/01/2012		
Norway		07/05/2001	07/05/2001	20/03/1997	
Poland		25/10/2005	25/06/1997		
Portugal		03/05/1996	30/05/2002	20/03/1998	
Romania		14/05/1997	07/05/1999		
San Marino		18/10/2001			
Serbia		22/03/2005	14/09/2009		
Slovak Republic		18/11/1999	23/04/2009		
Slovenia		11/10/1997	07/05/1999	07/05/1999	
Spain		23/10/2000	17/05/2021	17/05/2021	
Sweden		03/05/1996	29/05/1998	29/05/1998	
Switzerland		06/05/1976			
Türkiye		06/10/2004	27/6/2007		
Ukraine		07/05/1999	21/12/2006		
United Kingdom	*	07/11/1997	11/07/62		
Number of countries	46	2 + 44 = 46	7 + 35 = 42	16	

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 Revised Charter.

* **States** whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already being applied.

X **The State has** recognised the right of national NGOs to lodge collective complaints against it.

ANNEX III

LIST OF CONCLUSIONS OF NON-CONFORMITY EXAMINED ORALLY ON THE PROPOSAL OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (CSER + CSE)

ARTICLE 3
1. CSER 3§1 ARMENIA
2. CSER 3§2 ALBANIA
3. CSER 3§2 ROMANIA
4. CSE 3§1 (3§2 CSER) UNITED KINGDOM
5. CSER 3§3 ESTONIA
6. CSER 3§3 RUSSIAN FEDERATION
7. CSER 3§3 TÜRKIYE
8. CSER 3§4 ALBANIA
9. CSER 3§4 TÜRKIYE
ARTICLE 11
10. CSER 11§1 AZERBAIJAN
11. CSER 11§1 GEORGIA
12. CSER 11§1 MOLDOVA
13. CSER 11§1 ROMANIA
14. CSER 11§2 GEORGIA
15. CSER 11§3 AZERBAIJAN
16. CSER 11§3 GEORGIA
17. CSER 11§3 MOLDOVA
18. CSER 11§3 ROMANIA
ARTICLE 12
19. CSER 12§1 ARMENIA
20. CSER 12§1 ESTONIA
21. CSER 12§1 GEORGIA
22. CSER 12§1 HUNGARY
23. CSER 12§1 LATVIA
24. CSER 12§1 MONTENEGRO
25. CSER 12§1 ROMANIA
26. CSER 12§3 ARMENIA
27. CSER 12§3 ROMANIA
ARTICLE 13
28. CSER 13§1 ARMENIA
29. CSER 13§1 BOSNIA HERZEGOVINA
30. CSE 13§1 CROATIA
31. CSE 13§1 CZECH REPUBLIC
32. CSER 13§1 MONTENEGRO
33. CSER 13§1 ROMANIA
34. CSE 13§1 SPAIN
35. CSE 13§1 UK
36. CSE 13§4 CROATIA
37. CSER 13§4 MONTENEGRO
ARTICLE 14
38. CSER 14§1 AZERBAIJAN
39. CSER 14§1 HUNGARY
40. CSER 14§1 LATVIA
41. CSE 14§1 POLAND
ARTICLE 23 CSER / 4AP
42. 4AP DENMARK
43. CSER 23 MALTA

44. CSER 23 NETHERLANDS
45. CSER 23 NORWAY
ARTICLE 30
46. CSER 30 ESTONIA

ANNEX IV

LIST OF CONCLUSIONS DEFERRED (CSER + CSE)

COUNTRY	ARTICLES
ANDORRA	CSER Articles 3§1, 3§3, 11§1, 11§3, 12§3, 13§4, 30
ARMENIA	Articles 13§2 of the CSER
AUSTRIA	CSER Articles 3§2, 3§3, 11§1, 12§3
AZERBAIJAN	Article 11§2 of the CSER
BOSNIA-HERZEGOVINA	Article 11§1 of the CSER
CROATIA	CSE Articles 11§1, 11§3, 14§2
CYPRUS	CSER Articles 3§2, 3§3, 11§1, 11§2, 12§3, 14§2
CZECH REPUBLIC	CSE Articles 3§2, 11§1, 11§2, 11§3, 12§4, 13§4
DENMARK	Articles 3§2 and 14§2 of the CSE
ESTONIA	Articles 11§1, 11§3, 14§2 of the CSER
GEORGIA	Articles 12§3 and 14§2 of the CSER
HUNGARY	Articles 11§2, 11§3, 14§2 of the CSER
LITHUANIA	CSER Articles 3§2, 3§4, 12§1, 12§4, 14§2
LUXEMBOURG	CSE Articles 3§1, 3§2, 11§3, 12§1, 12§3, 13§1, 13§4, 14§2
LATVIA	CSER Articles 3§1, 3§2, 3§4, 11§2, 11§3, 14§2
MOLDOVA	Articles 3§1, 12§4 of the CSER
REPUBLIC OF NORTHERN MACEDONIA	CSER Articles 3§2, 11§1, 11§3, 12§3
MALTA	CSER Articles 11§1, 12§3, 12§4, 13§4, 14§2
MONTENEGRO	Articles 11(1), 11(3), 12(3), 12(4) and 14(2) of the ECSR
THE NETHERLANDS	Articles 3§2, 11§2, 11§3, 13§4 of the RESC
NORWAY	Articles 3§3 and 11§3 of the RESC
POLAND	CSE Articles 3§1, 3§2, 11§1, 11§2, 12§3
ROMANIA	CSERArticles 11§2, 12§3
RUSSIAN FEDERATION	Articles 3§1, 3§2, 11§1, 12§1, 14§2 of the CSER
SERBIA	Articles 3§1, 3§3, 11§1, 13§3 of the CSER
SLOVAK REPUBLIC	CSERArticles 3§1, 3§3, 11§2, 12§2, 12§3, 14§2
SPAIN	CSE Articles 3§1, 11§1, 11§3, 12§3
SLOVENIA	CSER Articles 3§2, 3§3, 11§3, 23
SWEDEN	Articles 3§2, 3§3, 11§2, 13§1 of the CSER
TÜRKIYE	Articles 3§2, 11§2, 11§3, 12§1, 12§4 of the CSER
UNITED KINGDOM	CSE Articles 3§2, 11§3, 14§2
UKRAINE	Articles 12§4, 14§1 of the CSER

ANNEX V

CONCLUSIONS 2021: EXAMPLES OF PROGRESS IN APPLYING THE EUROPEAN SOCIAL CHARTER ON "HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION" :

In its conclusions 2021/XXII-2, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes in practice in the States Parties or, in some cases, on the basis of new information clarifying the situation with regard to issues raised in previous examinations (thus reducing the number of conclusions deferred for lack of information). A selection of examples is given below.

Article 3, paragraph 2

Denmark

In 2019, the decree on carcinogens and mutagens was amended to implement Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. A national provision concerning the prohibition of recirculation of local stale air from work processes on construction sites has been amended to allow recirculation as long as the air is effectively purified.

Poland

Between 2016 and 2019, the National Labour Inspectorate drew up a programme entitled "Preventing the harmful effects of stress and other psychosocial risks in the workplace". Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation was transposed into Polish law on 13 June 2019.

Spain

The Data Protection and Digital Rights Guarantee Act (No. 3/2018) has recognised the right to disconnect.

Estonia

On 1 January 2019, amendments to the Occupational Health and Safety (OHS) Act came into force. One of these amendments concerns psychosocial risks. The term "psychological risks" has been replaced by the term "psychosocial risks". The definition of this term is specified in the law, as are the measures to be applied to prevent damage to health caused by psychosocial risks.

Hungary

The amendment to the law on safety at work, which came into force on 1 January 2008, introduced an obligation for employers to address psychosocial risk factors.

The recommendations of the International Commission on Radiological Protection (ICRP Publication No. 103, 2007) have been incorporated into Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, which Hungary has transposed into national law.

Lithuania

In order to facilitate the identification of the process for investigating psychosocial risk factors linked to changes in working conditions and to simplify the provisions to help small and medium-sized enterprises investigate these risks, the regulations relating to the investigation of psychosocial occupational risks were amended by Order No. V-153/A1-77 of the Minister of Health and the Minister of Social Security and Labour, dated 5 February 2019. In addition, on 1 May 2019, the Minister of Health adopted Order No. V-590 on improving workers' mental health skills and aiming to reduce the impact of stress at work on workers' health.

Montenegro

Domestic workers are now protected by workplace health and safety regulations.

Article 3, paragraph 3

Estonia

The Labour Inspectorate has developed a new information system that increases the efficiency of inspections, enables automated supervision and saves time. The new system, which has been operational since the first quarter of 2020, enables the Labour Inspectorate to cover more companies and workers during inspections and helps it to communicate with companies more quickly and effectively.

Sweden

The government has allocated increasing resources to the working environment. A total of SEK 100 million (€9.7 million) per year has been invested between 2015 and 2018. Over the same period, the government has increased funding for the Swedish Work Environment Authority (SWEA) by around SEK 110 million (€10.7 million), in particular to enable the recruitment of more inspectors. Following the increase in funding, the SWEA employed more than 150 new inspectors and the number of inspections therefore increased.

Türkiye

The Occupational Exposure Data Package, prepared in 2017, aims to ensure early detection of occupational exposures and increase awareness of occupational diseases .

Article 11, paragraph 1

Montenegro

A real-time electronic referral system and electronic prescribing have been introduced, radically reducing waiting times.

Norway

In July 2016, a law on gender recognition was passed, allowing people to change their legal gender (male/female) without having to undergo the sterilisation previously required.

Poland

Waiting times for a number of medical services have fallen significantly compared with the previous reference period.

Article 11, paragraph 2

Czech Republic

Since 2019, the Ministry of Health has been implementing the "Expanding Access and Creating Healthcare Opportunities for the Homeless" project (abbreviated to "Medical Practice for the Homeless") aimed at people living on the streets who are at risk of losing their shelter or who live in socially excluded communities. Its main objective is to provide medical assistance to target groups who do not seek medical and social care and who do not participate in preventive examinations and programmes.

Lithuania

In Lithuania, as far as health education in schools is concerned, schools implement the General Programme of Health and Sexuality Education and Preparation for Family Life (PHSEPFL), approved by Order No. V-941 of the Minister of Education and Science of 25 October 2016, to develop, *among other things*, healthy lifestyle skills and activities to promote health and prevent harmful habits. The programme covers a wide range of topics, such as self-awareness, gender identity, bullying, a child's socio-emotional state, sexual development (SOGI, responsible sexual behaviour, sexual diversity, discrimination, exclusion), etc.

Austria

Two legal acts concerning diverse sexualities and gender identities in the classroom have been adopted: the "Gender and Equality Reflective Pedagogy Act" of 2018 (Circular No. 21/2018) and the "Sex Education Act" of 2015 (Circular No. 13/2015). The latter establishes the foundations and content of sex education, emphasising a positive approach to human sexuality. It also tackles homophobia and transphobia and encourages schools to adopt a universal educational stance that should focus on the principle of gender equality and the diversity of lifestyles. The first addresses, among other things, the issue of gender-based violence in all its forms (e.g. sexual harassment, homophobia, gender-related innuendo, gender stereotyping, honour-based violence).

Luxembourg

The first national action plan to promote the rights of LGBTI people was adopted on 13 July 2018. This multi-annual plan sets out a comprehensive approach in this area. It comprises eight thematic chapters covering different spheres of life, including education, employment and work, health, family, welcome and integration, discrimination, hate crime and speech, transgender equality and intersex equality. The plan includes numerous awareness-raising and training activities on the issues of sexual orientation, gender identity and gender variations. These measures are aimed at the general public and specific groups (e.g. children, young people and health professionals).

Article 11, paragraph 3

Montenegro

In 2019, Montenegro adopted the Law on the Restriction of the Use of Tobacco Products, which includes, among other measures, a ban on smoking in the workplace and in public places, with fines for non-compliance ranging from €500 to €20,000.

Article 12, paragraph 3

Lithuania

A reform was launched at the beginning of 2017 to modernise the social security system. This reform aims, among other things, to integrate self-employed workers into the state social security system and to include different groups of platform workers (such as people working in the bicycle delivery services sector) in the category of "self-employed workers" in order to extend their social coverage and improve their social insurance benefits.

Montenegro

The law on job mediation and rights during unemployment came into force on 30 April 2019. This law reduced the length of insurance contributions required to qualify for unemployment benefit. In addition, the amount of unemployment benefit has been increased and the duration of benefit payments has been extended for certain categories of jobseekers.

The adjustment of retirement and disability pensions, which had been suspended throughout the previous reference period (2012-2015) due to the poor economic climate, resumed in 2016.

Poland

The minimum retirement pension was increased in 2016 and 2018, and the adjustment mechanism was modified. As a result of these changes, the minimum retirement pension has increased by 25% since 2016.

Implementation of the Retirement Pension+ programme began in 2019. This programme provides for the payment of a single supplementary benefit to anyone receiving a retirement or other pension, regardless of the amount. In 2019, 9.74 million people received this benefit (including 6.7 million retirees, 2.62 million pensioners and 282,000 people receiving social assistance pensions).

Ukraine

Ukraine accepted Article 12§3 of the Charter in 2017.

Article 13§3

Northern Macedonia

The services provided by social action centres are free of charge for beneficiaries.

Romania

Under Article 113 of the Social Assistance Act, all local public authorities are required to set up specialised structures called Public Social Assistance Services (PSAS) in urban and rural areas.

Article 23

The Czech Republic

Legislation prohibiting discrimination on grounds of age outside employment has been adopted since the situation was last examined by the ECSR.

The Slovak Republic

Priority has been given to developing local care as an alternative to institutional care.

Sweden

Legislation prohibiting discrimination on grounds of age outside employment has been adopted since the situation was last examined by the ECSR.

Article 30

The Netherlands

Two specific measures were launched during the reference period: the comprehensive approach to debt reduction (*Brede Schuldenaanpak*) and the ambitions for child poverty (*Ambities Kinderarmoede*).

With regard to the first initiative, since 2018 the government, in cooperation with municipalities, implementing bodies and civil society organisations, has been working to roll out the action plan, which includes more than 40 measures to combat debt problems.

With regard to the latter initiative, in 2019, four targets have been set to further reduce child poverty: (1) every child growing up in a low-income family is eligible for social assistance; (2) the number of low-income households with children is to be reduced over the next few years; (3) regular reviews of children's social exclusion are to be carried out; and (4) good practices and initiatives are to be identified by municipalities and other local and national organisations, with the aim of preventing child poverty and its harmful effects on children.

Norway

With regard to children and young people from low-income families, the government's strategy, "Children living in poverty" for the period 2015-2017, has been followed by a new cooperation

strategy, "Equal opportunities for children" for the period 2020-2023. The new strategy emphasises the importance of increasing the participation of children and young people from low-income families with other children and young people to enable them to develop on an equal footing, with a view to stimulating social mobility and breaking the generational cycle of poverty and low income.

Slovak Republic

The national framework strategy for promoting social inclusion and combating poverty is the main strategic document in this area. It systematises approaches to combating poverty and social exclusion. The first national framework strategy was prepared and approved by the government in 2015. It reflected the situation in the fight against poverty and social exclusion. In 2017, the strategy was updated to include other key areas for implementing social inclusion and anti-poverty measures, such as supporting the integration of the long-term unemployed, promoting youth employment, supporting better targeting in the social benefit system, supporting the integration of marginalised Roma communities, etc.

Slovenia

Since 1 January 2019, all family-related austerity measures have been abolished (after six years): paternity allowance and parental allowance have returned to 100% of the person's average earnings for the last 12 months (previously they were 90%); large family allowance is once again a universal right and can be granted to all large families, regardless of their income (previously it was limited to a certain income threshold); maternity allowance is not limited and parental allowance is 2.5 times average earnings (previously it was twice average earnings). From 1 July 2019, child benefit, state grants, childcare allowance, large family allowance, childbirth allowance and parental allowance have been increased.

Sweden

The Swedish government has made major investments in healthcare and education. Since 2017, the government has strengthened basic protection and reduced income tax for pensioners, increased the level of unemployment insurance benefits and increased housing, maintenance and child allowances.

ANNEX V RECOMMENDATIONS

TABLE OF RECOMMENDATIONS ADOPTED IN 2022										
ARTICLES										
STATUS	GEN	3.2	3.3	3.4	11.1	11.3	13.1	14.1	23/4A P	Recommendations
AZERBAIJAN					1	1				2
BOSNIA- HERZEGOVINA							1			1
CZECH REPUBLIC							1			1
DENMARK									1	1
HUNGARY								1		1
MOLDOVA					1	1				2
THE NETHERLANDS									1	1
ROMANIA		1								1
TURKIYE			1	1						2
TOTAL		1	1	1	2	2	2	1	2	12

FAILURE TO COMPLY WITH THE OBLIGATION TO DECLARE	1										
REPEATED NON-ESTABLISHED	1										
TOTAL	2										14