

# How can (I)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter



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# How can (I)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter

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*Comment les O(I)NG peuvent-elles s'engager avec le Comité européen des Droits sociaux dans le cadre de la procédure de suivi de la Charte sociale européenne*

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# Contents

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<b>INTRODUCTION</b>	<b>5</b>
What is the European Social Charter?	5
Two treaties	5
A tailored system	6
A tailored system	6
How is the implementation of the European Social Charter supervised?	6
An overview of rights under the Charter	7
<b>THE COLLECTIVE COMPLAINTS PROCEDURE</b>	<b>9</b>
What is the collective complaints procedure?	9
Which organisations can lodge complaints before the European Committee of Social Rights?	10
How can (I)NGOs bring a complaint to the European Committee of Social Rights?	10
How does the collective complaints procedure work?	11
How can organisations provide input with regard to collective complaints proceedings brought by others?	13
Where can information on previous collective complaints be found?	13
<b>THE REPORTING PROCEDURE</b>	<b>15</b>
What is the reporting procedure?	15
How can (I)NGOs submit additional information?	15
How does the reporting procedure work?	16
Where to find documentation relevant to past reporting?	18



# Introduction

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## What is the European Social Charter?

■ The European Social Charter is an international treaty protecting social and economic rights, such as trade unions rights, the right to work, social security, health or housing.

■ Most Member States of the Council of Europe (43 out of 47 Member States) have expressed their formal consent to give effect to the Charter by 'ratifying' this treaty. Through the act of 'ratification', States become 'parties' to the Charter and thereby have a legal obligation to implement the rights enshrined in this treaty.

## Two treaties

■ Two versions of the European Social Charter currently co-exist: [the initial version adopted in 1961](#) and [the revised version adopted in 1996](#). This latter version incorporates more rights and updates several of the rights already contained in the initial version. The Revised Charter is meant to progressively replace the 1961 Charter. States may be parties to either of these versions but not both. Most States (34 out of 43) have now ratified the revised version of the European Social Charter. When a State ratifies the Revised Charter it is, bound by the provisions that correspond to those that it had accepted under the 1961 Charter.

■ Therefore, when considering whether to engage with the European Committee of Social Rights, (I)NGOs should verify which version of the European Social Charter has been 'ratified' by the State Party in question (signature alone is insufficient). This information can be found on the website of the [European Social Charter](#). (I)NGOs will also need to check which provision(s) of the Charter the State Party has accepted (see below).

## A tailored system

■ The Charter is based on an ‘à la carte’ ratification system. This enables States to choose the provisions they are willing to accept as binding legal obligations. They must commit to accepting a minimum of 10 articles or 45 numbered paragraphs under the 1961 Charter, and a minimum of 16 articles or 63 numbered paragraphs under the Revised Charter.

■ As a result, when considering whether to engage with the collective complaints procedure or the reporting procedure (I)NGOs should verify which provisions of the European Social Charter legally bind the State that is of interest to them. They can do this by checking which provisions have been accepted by the State in question. The table of accepted provisions by State can be consulted on the Charter’s [website](#).

## How is the implementation of the European Social Charter supervised?

■ The implementation of the European Social Charter by States Parties is supervised by the European Committee of Social Rights. The European Committee of Social Rights is a body of 15 independent experts elected by the Council of Europe’s Committee of Ministers.

■ The European Committee of Social Rights monitors States Parties’ implementation of the European Social Charter through two procedures:

- ▶ (1) the collective complaints procedure; and
- ▶ (2) the reporting procedure.

■ (I)NGOs can contribute to both of these procedures, as explained below.

■ More information on the European Committee of Social Rights and how its different procedures work can be found in its [Rules](#) and on the relevant page of the [European Social Charter](#)’s website.

## An overview of rights under the Charter

■ A Digest presenting how the European Committee of Social Rights interprets the different articles of the European Social Charter through its two monitoring procedures can be found on the website of the [European Social Charter](#). The [Appendix](#) to the Digest contains relevant abstracts, decisions and conclusions of the European Committee of Social Rights. The Digest provides important information on the content of the rights under the Charter and what is expected of States that have agreed to be bound by them.





# The collective complaints procedure

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## What is the collective complaints procedure?

■ The collective complaints procedure was introduced by the [Additional Protocol providing for a system of collective complaints](#) adopted in 1995.

■ The collective complaints procedure aims to improve the enforcement of the social rights guaranteed by the Charter, and to strengthen the participation of social partners and civil society. It does so by allowing certain organisations to bring complaints against States Parties to the European Social Charter about alleged failures to give effect to the Charter adequately.

■ States Parties to the European Social Charter are not obliged to accept the collective complaints procedure, though they are strongly encouraged to do so. At the moment only 15 States have agreed to be bound by the procedure and hence can be subject to a complaint.

■ Collective complaints can **only** be brought against States that have either ratified the [Additional Protocol providing for a system of collective complaints](#) (signature alone is insufficient) or have made a declaration in terms of [Article D52](#) of the Revised Charter (Bulgaria and Slovenia had made this declaration so far). Information on such declarations can be found in the notes to the Chart of signatures and ratifications of the [Additional Protocol providing for a system of collective complaints](#).

## Which organisations can lodge complaints before the European Committee of Social Rights?

According to Article 1 of the Additional Protocol, only certain specific organisations are allowed to bring a complaint to the European Committee of Social Rights. They can do so if they believe that a State Party to the European Social Charter (and to the Additional Protocol) has failed to implement the Charter correctly. These organisations include:

- ▶ Certain international organisations of employers and trade unions including the [European Trade Union Confederation \(ETUC\)](#), for employees, as well as [Business Europe](#) and [International Organisation of Employers \(OIE\)](#), for employers.
- ▶ Certain international non-governmental organisations which have participative status with the Council of Europe. Such organisations are on the [List of International Non-Governmental Organisations \(INGOs\) entitled to submit collective complaints](#). Information on the request, renewal or conditions of entitlement of International NGOs to bring complaints to the European Committee of Social Rights, can be found on the website of the [European Social Charter](#) and on the website of the [Conference of International Non-Governmental Organisations of the Council of Europe](#).
- ▶ National organisations of employers and trade unions in the country concerned.

## How can (I)NGOs bring a complaint to the European Committee of Social Rights?

In order to be declared **admissible**, a collective complaint must satisfy various criteria. These criteria are set in the [Additional Protocol itself](#) and in the [Rules of the European Committee of Social Rights](#); and have been further interpreted through individual decisions on admissibility.

- ▶ The complaint must be lodged in writing;
- ▶ The complaint must be addressed to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe. The complaint must be sent to the following address: Department of the European Social Charter, Directorate General Human Rights and Rule of Law, Council of Europe, Agora building, 1 quai Jacoutot, F-67075 Strasbourg Cedex, France; E-mail address: [social.charter@coe.int](mailto:social.charter@coe.int);

- ▶ The complaint must clearly indicate the name and contact details of the complainant organisation;
- ▶ The complaint must be signed by a person entitled to represent the complainant organisation, and must show that the person submitting and signing the complaint is entitled to represent the organisation;
- ▶ The complaint must demonstrate that the organisation bringing the complaint is entitled to do so, within the meaning of the collective complaints procedure. (For more information, see subsection ‘Which organisations can bring a complaint to the European Committee of Social Rights?’ above);
- ▶ If the complaint is lodged by international bodies, it must be drafted in one of the Council of Europe’s official languages (English or French);
- ▶ If the complaint is lodged by national organisations, it must be drafted in the official language, or one of the official languages, of the State Party concerned;
- ▶ The complaint must relate to a State Party to the European Social Charter, which has accepted to be bound by the collective complaints procedure (Please see the subsections ‘Two treaties’ and ‘What is the collective complaints procedure?’ above);
- ▶ The complaint must relate to one or more provisions of the Charter, accepted by the State Party concerned. (Please see the subsection ‘A tailored system’ above);
- ▶ The complaint must indicate in what respect the State Party concerned has not ensured the satisfactory application of this provision (along with evidence, relevant argumentation and supporting documentation).

## How does the collective complaints procedure work?

### Admissibility

■ The European Committee of Social Rights will examine all the points listed above and will issue a decision on the admissibility of the complaint.

### Proceedings

■ If the European Committee of Social Rights declares the complaint admissible, it will invite the State concerned to make written submissions on the merits of the complaint, and will invite the organisation that lodged the complaint to respond to these submissions. A public hearing may be held subsequently, at the request of one of the parties or on the European Committee of Social Rights’ initiative.

## Merits

■ The European Committee of Social Rights will examine all the arguments and evidence presented during the proceedings, and will issue a decision on the merits of the complaint. This decision establishes whether the law and/or practice of the State concerned by the complaint complies with the European Social Charter.

## Follow-up

■ The decision of the European Committee of Social Rights must be respected by the State concerned. The follow-up to the decision is supervised by the Committee of Ministers of the Council of Europe, which may adopt a resolution or issue a recommendation to the State concerned. In any event, the Committee of Ministers cannot reverse the legal assessment made by the European Committee of Social Rights.

## Subsequent reporting on the follow-up

■ If the European Committee of Social Rights finds a breach of the European Social Charter in its decision on the merits of the complaint, the State concerned must provide information on the measures taken to give effect to this decision. The State concerned must provide this information in subsequent reports on the follow-up (called 'simplified reports'), forming part of the reporting procedure (please see the subsection 'How can organisations submit additional information?'; below). The European Committee of Social Rights will then determine whether the State concerned has brought the situation into compliance with the European Social Charter and will publish its "findings" in this respect.

## Immediate measures

■ The European Committee of Social Rights may indicate the measures which seem necessary to avoid the risk of a serious irreparable injury, in relation with the rights recognised in the European Social Charter. The Committee may indicate such measures at its own initiative or at the request of the complainant organisation.

■ If the complainant organisation requests immediate measures, it must specify: the reasons why immediate measure are sought; the possible consequences if these are not granted; and the particular measures requested.

## How can organisations provide input with regard to collective complaints proceedings brought by others?

■ In terms of Rules 32 and 32A of the [Rules of the European Committee of Social Rights](#), it is possible for third parties to intervene in the proceedings related to a collective complaint in which they otherwise have no direct involvement.

- ▶ Under Rule 32, the European Committee of Social Rights will invite international organisations of employers and trade unions to make observations as third parties, on complaints lodged by national organisations of employers and trade unions or lodged by non-governmental organisations. This invitation concerns: the European Trade Union Confederation (ETUC), for employees; as well as Business Europe and International Organisation of Employers (OIE), for employers. Their observations will be transmitted to the respondent State and to the organisation that lodged the complaint.
- ▶ The European Committee of Social Rights will also invite States that accepted to be bound by the collective complaints procedure but that are not concerned by the complaint, to make comments as third parties.
- ▶ In addition, under Rule 32A, the European Committee of Social Rights may invite any organisation, institution or person that it sees fit, to submit observations as third parties. Their observations will be transmitted to the respondent State and to the organisation that lodged the complaint.

■ In practice, (I)NGOs may also indicate to the European Committee of Social Rights their interest in submitting observations on a pending collective complaint. To do so, (I)NGOs are invited to contact the Secretariat of the European Social Charter by mail or e-mail using the contact details provided above.

## Where can information on previous collective complaints be found?

■ The case law of the European Committee of Social Rights can be found on the European Social Charter's [HUDOC](#) database.

■ [HUDOC](#) enables readers to narrow down their search by selecting particular types of documents in relation with the collective complaints, depending on what they may be interested in (decisions on admissibility, decisions on merits, requests to take immediate measures, decisions to strike out a complaint, or follow-up of decisions). [HUDOC](#) also enables readers to narrow down their search by selecting particular parameters involved in past collective

complaints, depending on what they may be interested in (particular provisions of the European Social Charter, States or complainant organisations involved in past decisions).

■ In addition, the website of the European Social Charter provides information on all [pending](#) and [processed](#) complaints. This includes all the documents exchanged during the procedure for each complaint (i.e. the complaints lodged; the observations, submissions and responses from parties and third parties; as well as the outcome reached by the European Committee of Social Rights).

More information on the collective complaints procedure can be found in the [Rules of the European Committee of Social Rights](#) (see Part VIII, Rules 23-40) and on [the relevant page of the Council of Europe's website](#).



# The European Social Charter reporting procedure

## What is the reporting procedure?

■ The reporting procedure was introduced by the 1961 Charter (see Part IV), and was amended through the [Turin Protocol adopted in 1991](#).

■ The reporting procedure aims to improve the realisation of the rights guaranteed by the European Social Charter, and to facilitate regular dialogue with States Parties as well as with the civil society. It aims to achieve this by inviting States to submit regular reports on the implementation of the European Social Charter, and by allowing particular organisations to submit additional comments and information.

■ Please note that all States Parties to either the Revised Charter or the 1961 Charter must submit regular reports on the implementation of the European Social Charter. However, the rights on which States must report will depend on the version of the European Social Charter they have ratified (see the subsection 'Two treaties') and on the provisions they have accepted (see the subsection 'A tailored system'). An up-dated [table of the accepted provisions by State](#) can be found on the website of the European Social Charter.

## How can (I)NGOs submit additional information?

■ As per Articles 23 (1) and 27 (2) of the 1961 Charter as amended by the [Turin Protocol](#), certain organisations are entitled to submit comments and information alongside national reports to the European Committee of Social Rights.

- ▶ International non-governmental organisations which have participative status with the Council of Europe and have particular competence in the matters governed by the Charter, as well as other organisations, institutions and entities may, as per the long-standing practice of the European Committee of Social Rights and Rule 21A of its Rules, submit comments on national reports. Whether and how such comments are taken into account is entirely within the discretion of the European Committee of Social Rights.
- ▶ Certain international organisations of employers and trade unions. Those include: national affiliate members of the European Trade Union Confederation (ETUC), for workers; as well as national organisation members of Business Europe and International Organisation of Employers (OIE), for employers. Please note that States Parties to the European Social Charter are under the obligation to communicate copies of their national reports to national members of these organisations.

■ **Comments on national reports must be submitted to the Secretariat of the European Social Charter before 30 April of the year during which the European Committee of Social Rights examines the national report concerned** (see [Rule 21A of the Rules of the European Committee of Social Rights](#)). This deadline has been set to allow States time to respond to the comments, if they so wish.

## How does the reporting procedure work?

### Submission of State reports

■ Every year, States Parties to the Charter present a report on the accepted provisions relating to **one of the four thematic groups** described below. The deadline for submission of national reports is 31 October of every year. [Guidance](#) for States on how to draft national reports can be found on the website of the European Social Charter.

### Reporting schedule

■ Following a [2006 decision from the Committee of Ministers](#), the provisions the European Social Charter have been divided into four thematic groups for the purposes of the reporting procedure. **States Parties present a report on the provisions relating to one of the four thematic groups annually.** Consequently, States report on each accepted provision of the Charter once every four years. The four thematic groups are as follows:

- ▶ **Group 1:** Employment, training and equal opportunities (relevant to Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25)



- ▶ **Group 2:** Health, social security and social protection (relevant to Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30)
- ▶ **Group 3:** Labour rights (relevant to Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29)
- ▶ **Group 4:** Children, families, migrants (relevant to Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 28)

■ Since a [2014 decision from the Committee of Ministers of the Council of Europe](#), all States that have accepted the collective complaints procedure must submit a simplified report every two years, according to a schedule that depends on the group they belong to.

- ▶ **Group A:** France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland
- ▶ **Group B:** Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic

■ A simplified report should contain information exclusively on the follow-up to the Committee's decisions in collective complaints. When submitting a simplified report States are exempted from reporting on the provisions of the thematic group. (I)NGOs may submit comments on simplified reports on the same terms as for the ordinary reports on the thematic groups (see above on Rule 21A)

■ The **set schedule for both ordinary and simplified reports** can be found in the [2014 decision from the Committee of Ministers of the Council of Europe](#) (document reference: CM(2014)26, Part II, item 8), available online.

## Meetings

■ The European Committee of Social Rights may decide to organise meetings with representatives of a State, on its own initiative or at the request of the State concerned to discuss the details of the report. The international organisations of employers and international trade unions allowed to submit comments alongside national reports will, in certain cases, be invited to participate in these meetings and they can inform their national member organisations. National organisations of employers and national trade unions may also be invited to participate in these meetings if the State concerned agrees.

## Conclusions

■ The European Committee of Social Rights will examine all the reports and comments received during the procedure, as well as any information received in meetings. At the end of the year, it will then **adopt conclusions regarding the implementation of the European Social Charter** by each of the States concerned.

## Follow-up

■ The conclusions of the European Committee of Social Rights must be respected by the State concerned. The follow-up of the conclusions of **the Committee is ensured by the Committee of Ministers of the Council of Europe** through the follow-up procedure (see below).

■ If the European Committee of Social Rights finds a non-conformity with the European Social Charter in its conclusions, the State concerned must provide information on the measures taken to give effect to these conclusions when submitting its **next national report**. The follow-up of conclusions is ensured by the Committee of Ministers of the Council of Europe, ensuing proposals made by the Governmental Committee (which comprises representatives of the States Parties to the Charter and observers representing European trade unions and employers' organisations). The Committee of Ministers may (but will not always) adopt a **resolution** or issue a recommendation to the State concerned, based on the proposals of the Governmental Committee, asking the State to change the situation in law and/or in practice if it has failed to remedy the situation.

■ More information on the reporting procedure and on the follow-up of the conclusions can be found on the website of the Council of Europe.

## Where to find documentation relevant to past reporting?

■ The jurisprudence, including reporting procedure conclusions of the European Committee of Social Rights can be found on the European Social Charter's [HUDOC](#) database.

■ [HUDOC](#) enables readers to narrow down their search by selecting particular types of documents in relation with the reporting procedure, depending on what they may be interested in (conclusions, statements of interpretation, separate opinions, or follow-up of conclusions). [HUDOC](#) also enables readers to narrow down their search by selecting particular parameters involved in past reporting cycles, depending on what they may be interested in (particular provisions of the European Social Charter, States or findings of (non)conformity involved in past reporting cycles).

■ Previous national reports and submissions (including from (I)NGOs) can be found on the website of the European Social Charter.

More information on the reporting procedure can be found in the [Rules of the European Committee of Social Rights](#) (see Part VII, Rules 19-22), or on the [relevant page of the Council of Europe's website](#).



The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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