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| **MINISTERS’ DEPUTIES** | CM Documents | **CM(2022)67-final** | 17 May 2022 |

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| **132nd Session of the Committee of Ministers (Turin, 19-20 May 2022)**  **Improving the European Social Charter system – Consolidated Report** |

Following the decisions taken by the Committee of Ministers at its last Session on 21 May 2021, the Deputies set up an ad hoc working party on the European Social Charter system to look into practical ways of improving:

1. the efficiency and impact of the reporting procedure under the European Social Charter while reducing the reporting burden for member States;
2. the follow-up by the Governmental Committee of the European Social Charter and European Code of Social Security (GC) and the Committee of Ministers to the conclusions prepared by the European Committee of Social Rights (ECSR) on the basis of the reports submitted by States Parties;
3. procedural aspects of the collective complaints procedure, including the follow-up by the ECSR and the Committee of Ministers of decisions on the merits of such complaints, having due regard to the competences of the ECSR.

They further instructed the ad hoc working party to submit its proposals in relation to these items by 30 April 2022 at the latest, in good time for the preparation of the Ministerial Session in May 2022.[[1]](#footnote-1)

The Ministers’ Deputies herewith submit a consolidated report covering the above items.

Work will continue on concrete operational proposals for the reform of the European Social Charter system after the Turin Ministerial Session and further decisions will be taken for the progressive implementation of the reform.

During the preparation of the report, the working party took account of the Secretary General’s proposals for improving the implementation of social rights and reinforcing the European Social Charter system ([SG/Inf(2021)13](https://search.coe.int/cm/Pages/result_details.aspx?Reference=SG/Inf(2021)13" \o "Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General’s proposals)) as well as the useful contributions received from representatives of the ECSR, the GC and the Steering Committee for Human Rights (CDDH), as well as from the social partners and the Council of Europe Conference of INGOs.

1. **Improving the efficiency and impact of the reporting procedure under the European Social Charter while reducing the reporting burden for member States**

*Statutory reports under Article 21 of the Charter and Article C of the revised Charter*

Improving the efficiency of the statutory reporting procedure requires streamlining and modernising it. Instead of a wholesale or comprehensive approach – seeking information of each accepted provision and responding to a growing number of questions posed and criteria developed by the ECSR – it is desirable to adopt a selective and targeted approach.

Reducing the reporting burden for States Parties need not have an adverse effect on the impact of the reporting procedure because of the benefits that more focused reporting will bring about. Impact will be improved if more focused and targeted reporting is coupled with, on the one hand, enhanced direct and constructive dialogue between the organs of the Charter and States Parties and, on the other hand, a strengthening of the follow-up to ECSR conclusions (see under item b. below).

Building on the changes introduced in recent years by the ECSR, it is proposed that the issues to be reported on by States Parties and subsequently examined by the organs of the Charter be reduced to up to about a dozen Charter provisions per report. The provisions selected for reporting by States Parties will be the subject of “targeted questions”.

The targeted questions themselves should seek to render the reporting procedure more relevant. Increasing impact requires looking at the present and future, not back in time over a past reference period. A report should therefore focus on the situation at the time of submitting it and, where appropriate, reflect action being taken or envisaged by the State Party to change or improve the prevailing situation.

Reports by States Parties should be concise while giving a comprehensive up-to-date overview of major relevant developments. While States Parties should remain free to decide on the length of their reports, indicative guidance may be provided as to the expected or desirable length.

It is proposed to combine these measures with a reduction in the frequency of reports to one every two years (currently one report each year on one out of four groups of provisions). To this end, the 98 provisions (Articles and numbered paragraphs) in the revised Charter could be divided into two roughly equivalent groups, an approach that should be mirrored as regards the 1961 Charter and the 1988 Protocol while taking into account their specificities.

It is proposed to invite the ECSR to discontinue the practice of asking additional questions for response in the next report on a particular subject. This would be consistent with the new thematic approach involving targeted questions. Nonetheless, it should be possible for the ECSR during the examination of a report to address specific questions to a State Party where clarification is necessary to assess the situation or where questions remained unanswered from an earlier reporting exercise (report and follow-up).

*Ad hoc reports*

The implementation of social rights requires adjustments to evolving realities and circumstances. To respond to this, it is proposed to supplement the above statutory reports with ad hoc reports that would allow to examine new or critical issues that have a broad or transversal scope or a pan-European dimension. These reports would allow to gather information on the issues identified and on the responses adopted or envisaged by States Parties.

Especially when change is rapid, unforeseen or is due to unexpected crises, the legal and policy responses may take some time. Because of this, immediate assessment “from a legal standpoint [of] the compliance of national law and practice with the obligations arising from the Charter” (cf. Article 24 of the Charter as amended by the 1991 Turin Protocol) would not appear opportune. ECSR conclusions should not be required in such cases. Instead, ad hoc reports should serve as a basis for general analyses by the ECSR of the challenges raised by new or critical issues, followed by dialogue among the States Parties on ways to address them (within the framework of the GC).

Building on the analysis of a particular issue and information on good practice emerging from States Parties, in appropriate cases, the GC could propose that additional guidance or general recommendations be addressed to all States by the Committee of Ministers, under the terms of Article 15*.b* of the Statute of the Council of Europe.

*Common to both statutory and ad hoc reports*

Relying on Article 21 of the Charter (and Article C of the revised Charter) which stipulates that the form of the reports required from States Parties is determined by the Committee of Ministers (i.e. collectively by the States Parties themselves), it is proposed that the issues to be addressed in statutory and ad hoc reports be decided by the GC in consultation with the ECSR.

*States Parties that have accepted the collective complaints procedure*

It is proposed that States Parties that have accepted the collective complaints procedure be asked to submit only one short report as described above, every four years, and that complaints lodged against a particular State Party be taken into account when determining the provisions to be covered by that State’s report.

1. **Follow-up by the GC and the Committee of Ministers to the conclusions prepared by the ECSR on the basis of the reports submitted by States Parties**

The strength of a monitoring mechanism is closely linked to follow-up. Increasing impact also requires a forward-looking and action-oriented approach. Follow-up will therefore play a fundamental part in improving the impact of the reporting procedure. Increasing impact also requires identifying and selecting the most serious or urgent situations requiring in-depth examination during the follow-up procedure.

Building on and consolidating recent developments and having regards to Article 27 of the Charter as amended by the 1991 Protocol, and Article C of the revised Charter, the GC should make, where appropriate, reasoned proposals for recommendations for adoption by the Committee of Ministers (under Article 28 of the Charter).

Recommendations should adopt a constructive, non-judgemental approach. They should encourage positive change. To this end, it is important that recommendations are prepared in consultation with each State concerned. Constructive dialogue should permit to gather valuable information that will allow the GC to make reasoned proposals. Among the social, economic and other policy considerations that the GC is required to take account of, it should examine possible measures adopted, envisaged or proposed by the State Party in question with a view to improving the situation and to bringing it into conformity with the Charter requirements.

Enhanced, direct and constructive dialogue should therefore be seen as an integral part of the follow-up. It should be possible for such dialogue to be initiated by the national authorities of a State Party or by one of the Charter’s monitoring bodies. In certain cases, dialogue between a State Party and the organs of the Charter could associate other States Parties that experience comparable realities or had to respond to similar situations and can offer examples of good practice. Dialogue and peer support may be conducive to the State Party concerned exploring possible measures that it may wish to adopt.

Dialogue could take the form of requests for information, exchanges of letters or, if it is proposed or accepted by a State Party, meetings or country visits. The purpose should be a better understanding of problematic issues and to identify possible solutions, including by sharing experience and good practices among States Parties. In cases of persistent non-conformity, dialogue may lead a State Party that wishes to do so to develop and adopt roadmaps, strategies or action plans. Dialogue may also involve other relevant stakeholders.

The Secretariat could be asked to explore the feasibility of providing output information in the form a comparative dashboard on the implementation of the Social Charter in the States Parties to facilitate the Committee of Ministers in playing its strategic oversight role.

1. **Procedural aspects of the collective complaints procedure, including the follow-up by the ECSR and the Committee of Ministers of decisions on the merits of such complaints, having due regard to the competences of the ECSR**

Procedural aspects of the collective complaints procedure do not call for major changes. Nonetheless, it is desirable to encourage the strict application of admissibility requirements. In the interest of legal certainty and predictability, it would also be important for States that accept collective complaints and for the other actors in the procedure that the criteria applied by the ECSR are clear and applied consistently. The ECSR could be encouraged to publish them and, when necessary, update the published criteria. States that accept collective complaints also consider it desirable to re-state clearly – and strengthen – the adversarial dimension of the procedure. In particular, a respondent State should have the opportunity to respond to all allegations and submissions made at any stage of the procedure.

As regards the follow-up, the Committee of Ministers could build on recent developments and, as stipulated in Article 9 of the 1995 Protocol, it may continue to adopt recommendations addressed to the States Parties concerned in cases where the ECSR finds that the Charter has not been applied in a satisfactory manner.

It is proposed that States Parties be asked to submit one single report on follow-up to ECSR decisions in collective complaints two years after the Committee of Ministers’ recommendation in respect of each decision concerned. The assessment and findings of the ECSR on the follow-up report to the complaint could be transmitted to the Committee of Ministers for possible further action. In this context, the Committee of Ministers might wish to refer the case to the GC for additional consultations in appropriate cases. GC consultations may be conducive to identifying possible measures that could be taken, to developing roadmaps or could even facilitate the elaboration and adoption of strategies or action plans by the national authorities that wish to do so.

The GC should inform the Committee of Ministers of the outcome of these consultations with a view to closing the procedure.

1. The Deputies asked the Working Group to examine subsequently the more longer-term substantive and procedural issues. [↑](#footnote-ref-1)