



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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**MODEL PROVISIONS FOR A BILATERAL  
SOCIAL SECURITY AGREEMENT AND  
EXPLANATORY REPORT**

**COMMITTEE OF EXPERTS FOR THE APPLICATION OF THE  
EUROPEAN CONVENTION ON SOCIAL SECURITY (SS-AC)**

**AGREEMENT BETWEEN**

**X**

**AND**

**Y**

**ON SOCIAL SECURITY**

The Government of x

and

The Government of y

Being desirous of regulating relations between the two States in the field of social security,  
have agreed as follows:

**PART I**  
**GENERAL PROVISIONS**

**Article 1**

Definitions

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1.

For the purpose of this Agreement:

- (a) x means ..... and y means.....;
- (b) the term "territory" means.....;
- (c) the term "national of a Contracting Party" means a person of the nationality of either Contracting Party;
- (d) the term "legislation" means any laws, regulations and other statutory instruments which are in force in the whole or any part of the territory of each Contracting Party and which relate to the social security branches and schemes specified in Article 2;
- (e) the term "competent authority" means the minister, ministers or other corresponding authority responsible for the social security branches and schemes in all or any part of the territory of each Contracting Party,
- (f) the term "institution" means the body or authority responsible for applying all or part of the legislation of each Contracting Party;
- (g) the term "competent institution" means the institution which is competent under the applicable legislation;
- (h) the terms "benefit" and "pension" means all benefits or pensions including all components thereof provided out of public funds as well as all increases, revaluation allowances or supplementary allowances, unless otherwise specified in this Agreement;
- (i) the term "residence" means ordinary residence;
- (j) the term "stay" means temporary residence;
- (k) the term "period of insurance" means periods of contributions, occupational activity or residence and equivalent periods completed under the legislation of each Contracting Party;

- (l) the term "frontier worker" means an employed person who is employed in the territory of one Contracting Party and resides in the territory of the other Contracting Party where he normally returns every day or at least once a week;
  - (m) the term "refugee" has the meaning assigned to it in Article 1 of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951, and in Article 1, paragraph 2, of the Protocol on the Status of Refugees of 31 January 1967;
  - (n) the term "stateless person" has the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons, signed at New York on 28 September 1954;
  - (o) the term "members of the family" means the persons defined, or recognised as such by the legislation applied by the competent institution;
2. Other terms and expressions which are used in this Agreement shall have the meanings respectively assigned to them in the legislation of either Contracting Party.

## **Article 2**

### Material scope

#### Alternative 1:

1. This Agreement shall apply
- (a) As regards x, to the legislation governing
    - (i) ...
    - (ii) ...
  - (b) As regards y, to the legislation governing
    - (i) ...
    - (ii) ...

*(list of schemes or laws which both Contracting Parties wish to regulate under this Agreement)*

Alternative 2:

1. 1. This Agreement shall apply to all social security schemes and special schemes, whether contributory or non-contributory, governing:

- (a) (a) ...
- (b) (b) ...
- (c) (c) ...

*(list of benefits which both Contracting Parties wish to regulate under this Agreement)*

2. Subject to paragraph 3 below, this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1 above.
3. This Agreement does not apply to legislation introducing a new scheme of social security.

### **Article 3**

Personal scope

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Alternative 1:

Unless otherwise provided, this Agreement shall apply to all persons who are or have been subject to the legislation of either or both Contracting Parties as well as to members of the family and survivors of such persons insofar as their rights derive from those persons.

Alternative 2:

Unless otherwise provided, this Agreement shall apply to all nationals of both Contracting Parties, refugees and stateless persons who are or have been subject to the legislation of either or both Contracting Parties as well as to members of the family and survivors of such persons insofar as their rights derive from those persons.

### **Article 4**

Equal treatment

1. 1. Unless otherwise provided in this Agreement, the following persons shall, while residing in the territory of either Contracting Party, have the same rights and obligations under the legislation of that Contracting Party as its own nationals:

- (a) (a) nationals of the other Contracting Party;
  - (b) (b) refugees and stateless persons;
  - (c) members of the family and survivors, irrespective of their nationality, of the persons mentioned in subparagraphs (a) and (b) with regard to rights which derive from such persons.
2. The provisions of paragraph 1 of this article shall not affect the legislation of either Contracting Party in so far as it concerns participation in social security administration or membership of social security tribunals.

## **Article 5**

### Export of benefits

1. Unless otherwise provided in this Agreement, any provision of the legislation of either Contracting Party which restricts payment of benefits solely because a person resides outside or is absent from the territory of that Contracting Party shall not be applicable to persons who reside in the territory of the other Contracting Party.
2. The provisions of paragraph 1 above shall not apply to the following benefits:
- (a) (a) unemployment benefits;
  - (b) special benefits granted as assistance or in case of need.

## **Article 6**

### Prevention of overlapping of benefits

1. Any provisions of the legislation of either Contracting Party that are aimed at the reduction, suspension or withdrawal of benefits in cases where there is an overlap with other benefits or other income, or because of an occupational activity, shall also apply to a beneficiary in respect of benefits acquired under the legislation of the other Contracting Party or in respect of income received, or an occupation carried on in the territory of the other Contracting Party.
2. Paragraph 1 shall not apply to benefits in respect of invalidity, old age, death (grants) or occupational disease which are awarded by the institution of both Contracting Parties, in accordance with the provisions of Article 21 and Article 26(b).

**PART II**  
**APPLICABLE LEGISLATION**

**Article 7**

General rules

Unless otherwise provided in this Part:

- (a) a person who is employed in the territory of either Contracting Party shall, with respect to that employment, be subject to the legislation of only that Contracting Party, even if he resides in the territory of the other Contracting Party, or if his employer or the registered office of his employer is located in the territory of the other Contracting Party;
- (b) a self-employed person who follows his occupation in the territory of either Contracting Party shall be subject to the legislation of that Contracting Party, even if he resides in the territory of the other Contracting Party;
- (c) civil servants of either Contracting Party and persons deemed as such shall be subject to the legislation of the Contracting Party in whose administration they are employed.

**Article 8**

Posted workers

1. 1. A person who is employed in the territory of either Contracting Party and who is posted by his employer to the territory of the other Contracting Party to perform certain work there whilst staying in paid employment with the same employer, shall continue to be subject to the legislation of the first Contracting Party for the duration of that work as if he were still employed in the territory of that Contracting Party, provided that the anticipated duration of the work does not exceed a period of 12 months [24 months].
2. A person who is normally self-employed in the territory of either Contracting Party and who performs work in the territory of the other Contracting Party shall continue to be subject to the legislation of the first Contracting Party, provided that the anticipated duration of the work does not exceed 12 months [24 months].

**Article 9**

Personnel of international transport undertakings

A person who is a member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office in the territory of either Contracting Party shall be subject to the legislation of that Party, with the following restrictions:



- (i) where the said undertaking has a branch or permanent representation in the territory of a Contracting Party other than that in which it has its registered office, a person who is employed by such branch or permanent representation shall be subject to the legislation of the Contracting Party in whose territory such branch or permanent representation is situated;
- (ii) where a person is employed principally in the territory of the Contracting Party in which he resides, he shall be subject to the legislation of that Contracting Party, even if the undertaking which employs him has no registered office or branch or permanent representation in its territory.

## **Article 10**

### Crew members on vessels

#### Alternative 1:

1. A person who is employed on board a vessel flying the flag of either Contracting Party shall be subject to the legislation of that Contracting Party.

#### Alternative 2:

1. A person who is employed on board a vessel flying the flag of either Contracting Party and who is resident in the territory of that Contracting Party shall be subject to the legislation of that Contracting Party provided that the registered office of the individual employing him is situated in its territory.
2. The provisions of Article 8 shall apply *mutatis mutandis* to a person who is sent to work on board a vessel flying the flag of either Contracting Party.

## **Article 11**

### Diplomatic missions and consular posts

1. Members of diplomatic missions or consular posts of either Contracting Party as well as persons employed in the private service of officials of such missions or posts, who are posted to the receiving State, shall be subject to the legislation of the sending State.
2. Employed persons referred to in the preceding paragraph who are not posted shall be subject to the legislation of the receiving State. However, if they are nationals of the sending State they may opt for the application of the legislation of that State. Such right of option may be exercised within the three months following the date on which the person concerned is engaged by the diplomatic mission or consular post or enters the private service of an official of that diplomatic mission or consular post, as the case may be.

## **Article 12**

### Exceptions to the provisions of Articles 7 to 11

The competent authorities of the two Contracting Parties may agree on exceptions to the provisions of Articles 7 to 11 in the interest of any person or category of persons, provided that the affected person or persons are subject to the legislation of either Contracting Party.

**PART III**  
**SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF**  
**BENEFITS**

**SECTION 1**

**SICKNESS AND MATERNITY BENEFITS**

**Article 13**

Aggregation of periods of insurance

1. If the legislation of either Contracting Party makes entitlement to benefits conditional upon the completion of periods of insurance, the competent institution of that Party shall take account, to the extent necessary, of periods of insurance completed under the legislation of the other Contracting Party, in so far as they do not overlap, as if they were periods of insurance completed under the legislation of the first Party.
- [ 2. As far as entitlement to daily cash benefits in the event of sickness and maternity is concerned, the aggregation mentioned in paragraph 1 of this Article shall be effected only if the person concerned was last engaged in a gainful occupation in the territory of the Contracting Party under whose legislation the application was made. ]

**Article 14**

Stay in the other Contracting Party

1. Persons who satisfy the conditions for entitlement to benefits under the legislation of either Contracting Party and whose condition necessitates the immediate provision of benefits during their stay in the territory of the other Contracting Party shall receive benefits in kind, provided at the expense of the competent institution by the institution of the place of stay in accordance with the provisions of the legislation applied by the latter institution, as if such persons were affiliated to it.
2. The provision of prostheses, major appliances and other substantial benefits in kind shall be dependent on the prior agreement of the competent institution, unless provision of the benefit cannot be postponed without serious danger to the life or health of the person concerned.
3. Cash benefits shall be paid by the competent institution in accordance with the provisions of the legislation it applies.
4. The provisions of the preceding paragraphs shall apply, *mutatis mutandis*, to members of the family in respect of benefits in kind.

## Article 15

### Residence in the other Contracting Party

1. Persons who reside in the territory of either Contracting Party and who satisfy the conditions for entitlement to benefits under the legislation of the other Contracting Party shall receive, in the territory of the Contracting Party in which they are resident, benefits in kind provided at the expense of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation which the latter institution applies, as if such persons were affiliated to it.
2. The provision of prostheses, major appliances and other substantial benefits in kind shall be dependent on the prior agreement of the competent institution, unless provision of the benefit cannot be postponed without serious danger to the life or health of the person concerned.
3. Cash benefits shall be paid by the competent institution in accordance with the provisions of the legislation it applies.
4. The provisions of the preceding paragraphs shall apply, *mutatis mutandis*, in respect of benefits in kind for members of the family who reside in the territory of the other Contracting Party in so far as they are not entitled to such benefits arising from a professional activity under the legislation of that Contracting Party.

## Article 16

### Frontier workers

A frontier worker may also obtain benefits in the territory of the Contracting Party where the competent institution is situated. Such benefits shall be provided by the competent institution in accordance with the legislation of that Party, as though the person concerned were resident in its territory. Members of his family may receive benefits on the same conditions; however, receipt of such benefits shall, except in urgent cases, be conditional upon an agreement between the competent authorities of both Parties or, failing that, on prior authorisation by the competent institution.

## Article 17

### Pensioners and members of their family

1. A pensioner receiving a pension under the legislation of both Contracting Parties shall receive benefits in kind under the legislation of the Contracting Party in

whose territory he is resident, as if he were a pensioner under the legislation of that Party only.

2. 2. A pensioner receiving a pension under the legislation of either Contracting Party who is resident in the territory of the other Contracting Party shall be entitled to benefits in

kind on condition that he would be entitled to them if he were resident in the territory of the former Party. The benefits in kind shall be provided by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as if the pensioner were entitled to such benefits under that legislation; however, the cost shall be borne by the competent institution of the other Party.

3. Where the members of the family of a pensioner receiving a pension under the legislation of either or both Contracting Parties are resident in the territory of the Contracting Party other than that in which the pensioner himself resides, they shall receive benefits in kind as if the pensioner were resident in the same territory. The benefits in kind shall be provided by the institution of the place of residence of the members of the family, in accordance with the provisions of the legislation it applies; however, the cost shall be borne by the institution of the pensioner's place of residence.

4. The provisions of Article 14 and of Article 15, paragraph 4, shall apply, *mutatis mutandis*.

## **Article 18**

### Institutions of the place of stay or residence

- The benefits referred to in Articles 14 and 15 and in Article 17, paragraph 2, shall be granted:

in x  
by ..... (\*)

in y  
by ..... (\*)

(\*) If there are two or more schemes in either Contracting Party, the general scheme or, failing that, the scheme for industrial workers.)

## **Article 19**

### Reimbursement

- Alternative 1:

1. The competent institution shall refund the actual amount of benefits in kind provided on its behalf by the institution of the place of stay or residence under the provisions of Articles 14 and 15 and Article 17, paragraphs 2 and 3.
2. The competent authorities of both Contracting Parties may agree on other arrangements for refunds, or they may agree that there shall be no refunds between the institutions concerned.

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Alternative 2:

1. The refund of the cost of benefits in kind provided under Article 14, Article 15 and Article 17, paragraphs 2 and 3 shall be determined and effected in accordance with regulations to be agreed on by the competent authorities of both Contracting Parties.
2. The competent authorities of both Contracting Parties may agree that there shall be no refund between the insurance institutions concerned

## SECTION 2

### INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS

#### Article 20

##### Aggregation of periods of insurance

1. Where the legislation of either Contracting Party makes the entitlement to benefits conditional upon the completion of periods of insurance, the institution which applies that legislation shall take account to the extent necessary, of periods of insurance completed under the corresponding legislation of the other Contracting Party, in so far as they do not overlap, as if they were periods completed under the legislation of the first Party.
2. Where the legislation of either Contracting Party makes the granting of certain benefits conditional upon the completion of a certain period in an occupation covered by a special scheme or in a specified occupation or employment, only periods completed under a corresponding scheme or, in the absence of such a scheme, in the same occupation or in the same employment, as appropriate, under the legislation of the other Contracting Party shall be taken into account for determining entitlement to such benefits.
3. Where the legislation of either Contracting Party makes the granting of benefits conditional on the person concerned or, in the case of survivors' benefit on, the deceased having been subject to that legislation at the time at which the contingency arose, such condition shall be deemed to be fulfilled if the person concerned or the deceased, as appropriate, was subject at that time to the legislation of the other Contracting Party or, failing that, if the person concerned or the survivor can claim corresponding benefits under the legislation of the other Contracting Party.
4. Where the legislation of either Contracting Party provides that the period of payment of a pension is reckonable for determining entitlement to benefit, the competent institution of that Party shall for that purpose take account of any period during which a pension was paid under the legislation of the other Contracting Party.
5. 5. Where the legislation of either Contracting Party makes the granting of invalidity benefits conditional upon the person concerned having received sickness cash benefits or having been incapable of work during a specified period, any period during which, in respect of that incapacity for work, he has, under the legislation of the other Contracting Party, received sickness cash benefits, or, in lieu thereof, continued to receive a wage or salary, is taken into consideration.

## Article 21

### Award of benefits

#### Alternative I: ("Pro rata temporis" calculation)

1. Where a person has been subject successively or alternately to the legislation of both Contracting Parties, the institution of each Party shall determine, in accordance with the legislation it applies, whether such person or his survivors qualifies or qualify for benefit, having regard, where appropriate, to the provisions of Article 20.
2. Where the person concerned satisfies the conditions specified in paragraph 1 of this Article under the legislation of either Contracting Party without regard to the provisions of Article 20, the competent institution of that Contracting Party shall calculate the benefits solely on the basis of the periods completed under the legislation it applies.
3. Where the person concerned satisfies the conditions specified in paragraph 1 of this Article under the legislation of either Contracting Party, regard being had only to the provisions of Article 20, the competent institution of this Contracting Party shall calculate the benefit as follows:
  - (a) the competent institution shall calculate the theoretical amount of benefits payable if all the periods completed under the legislation of both Contracting Parties had been completed solely under the legislation which that institution applies;
  - (b) however, in the case of benefits the amount of which does not depend on the length of periods completed, that amount shall be taken to be the theoretical amount referred to in the preceding sub-paragraph;
  - (c) the competent institution shall then calculate the actual amount of benefit payable by it to the person concerned on the basis of the theoretical amount calculated in accordance with the provisions of sub-paragraph a or of sub-paragraph b of this paragraph, as appropriate, and in proportion to the relationship between the periods completed before the contingency arose under the legislation it applies and the total of the periods completed before the contingency arose under the legislation of both Contracting Parties;
  - (d) if the total of the periods completed under the legislation of both Contracting Parties before the contingency arose exceeds the maximum period required by the legislation of either Party for the receipt of full benefit, the institution of that Party shall, when applying the provisions of sub-paragraph a of this paragraph, take this maximum period into account instead of the total of the periods completed, without however being obliged to grant greater benefit than the full benefit provided for in the legislation it applies.



4. 4. Where the legislation of either Contracting Party provides that the amount of benefit, with the exception of means-tested benefit ensuring a minimum income, shall vary with the number of members of the family, the competent institution of that Party shall also take into account the members of the family resident in the territory of the other Contracting Party as if they were resident in the territory of the first Party.

Alternative 2: (Direct calculation)

1. Where, under the legislation of either Contracting Party entitlement to benefit also exists without the application of Article 20, the competent institution of that Party shall determine the amount of payable benefits solely on the basis of periods of insurance completed under that legislation.
2. Where, under the legislation of either Contracting Party entitlement to benefit exists only with the application of Article 20, the competent institution of that Party shall determine the amount of payable benefit solely on the basis of periods of insurance completed under that legislation and the following provisions:
  - (a) benefits or parts of benefits the amount of which, under the legislation of either Contracting Party, does not depend on the duration of the periods of insurance completed shall be calculated in proportion to the ratio of the duration of the periods of insurance reckonable for the calculation under this legislation up to 30 years, but at most up to the full amount.
  - (b) where, under the legislation of either Contracting Party, subsequent to periods the occurrence of the contingency are reckonable for the calculation of invalidity or survivors' benefits, those periods shall be reckoned only in proportion to the ratio of the duration of the periods of insurance to be taken into account for the calculation under this legislation to two-thirds of the time between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but at most up to the full period.
  - (c) sub-paragraph a shall not apply to:
    - (i) benefits resulting from supplementary insurance,
    - (ii) means-tested benefits ensuring a minimum income.
3. Where the legislation of either Contracting Party provides that the amount of benefits, with the exception of means-tested benefits for ensuring a minimum income, shall vary with the number of members of the family, the competent institution of that Party shall also take into account the members of the family resident in the territory of the other Contracting Party as if they were resident in the territory of the first Party.

**Article 22**

Period of insurance of less than one year

1. 1. Notwithstanding the provisions of Article 21, where the total duration of the periods of insurance completed under the legislation of a Contracting Party is less than one year and where, on the basis solely of those periods, no right to benefit exists under that legislation, the institution of the Party concerned shall not be bound to grant benefit in respect of the said periods.
  
2. The periods of insurance referred to in the preceding paragraph shall be taken into account by the institution of the other Contracting Party for the purpose of applying the provisions of Article 21, (Alternative 2 of Article 21), as if those periods had been completed under the legislation it applies, except those of paragraph 3 (c) thereof, (Alternative 1 of Article 21).

**SECTION 3**  
**DEATH GRANT**

**Article 23**

Aggregation of periods of insurance and award of death grants

1. If the legislation of either Contracting Party makes entitlement to benefit conditional upon the completion of periods of insurance, the competent institution of that Party shall, to the extent necessary, take account of periods of insurance completed under the legislation of the other Contracting Party, in so far as they do not overlap, as if they were periods completed under the legislation of the first Party.
2. If a person dies in the territory of either Contracting Party his death shall be treated, for the purpose of any claim to a death grant under the legislation of either Contracting Party, as if it had occurred in the territory of that Contracting Party.
3. If there would be entitlement to a death grant under the legislation of both Contracting Parties, whether by virtue of this Agreement or otherwise:
  - (a) (a) the grant shall be payable only under the legislation of the Contracting Party in whose territory the death occurs; or
  - (b) if the death does not occur in the territory of either Contracting Party, the grant shall be payable only under the legislation of the Contracting Party under whose legislation the person on the basis of whose insurance the right to the grant is determined was last insured before the death.

## SECTION 4

### OCCUPATIONAL INJURIES AND DISEASES BENEFITS

#### Article 24

##### Exposition to the same risk in both Contracting Parties

1. 1. Where a person contracts an occupational disease after engaging in an occupation liable to cause that disease under the legislation of both Contracting Parties, any benefit to which he or his survivors may be entitled shall be awarded exclusively under the legislation of the last of those Contracting Parties whose conditions are satisfied, regard being had, where appropriate, to the provision of paragraphs 2 to 4 of this Article.
2. If the legislation of either Contracting Party makes the granting of benefits for occupational diseases conditional upon the disease in question being first diagnosed in its territory, that conditions shall be deemed to have been fulfilled if the disease was first diagnosed in the territory of the other Contracting Party.
3. If the legislation of either Contracting Party explicitly or implicitly makes the granting of benefits for occupational diseases conditional upon the disease in question being diagnosed within a specified period after the termination of the last occupation liable to cause such a disease, the competent institution of that Contracting Party, when ascertaining the time at which the occupation in question was carried on in the territory of the other Contracting Party shall, to the extent necessary, take account of any similar occupation engaged in under the legislation of the other Contracting Party as if it had been engaged in under the legislation of the first Contracting Party.
4. If the legislation of either Contracting Party explicitly or implicitly makes the granting of benefits for occupational diseases subject to the condition that an occupation liable to cause the disease in question was carried out for a specific period, the competent institution of that Contracting Party shall, to the extent necessary, take account of periods during which such an occupation was carried on in the territory of the other Contracting Party shall be taken into account for calculation purposes.

##### Alternative 1:

5. In the cases of sclerogenic pneumoconiosis,

##### Alternative a:

the cost of cash benefits

##### Alternative b:

the cost of pensions in respect of the occupational disease shall be apportioned between the Contracting Parties, in proportion to the relationship between the duration of the periods completed under the legislation of each Contracting Party and the total duration of the periods completed under the legislation of both Contracting Parties.

Alternative 2:

5. In the cases of sclerogenic pneumoconiosis, the competent institution of either Contracting Party shall grant the pension in proportion to the relationship between the duration of periods of insurance referred to in Article 20 completed under the legislation of each Contracting Party and the total duration of the periods completed under the legislation of both Contracting Parties.

**Article 25**

Residence or stay in the other Contracting Party

1. Persons having sustained an occupational injury or contracted an occupational disease who reside or stay in the territory of a Contracting Party other than that of the competent institution shall receive in the territory of that Contracting Party benefits in kind provided at the expense of the competent institution by the institution of the place of residence or stay in accordance with the provisions of the legislation which the latter institution applies, as if those workers were affiliated to it.
2. Cash benefits shall be paid by the competent institution in accordance with the provisions of the legislation it applies.
3. The provisions of Article 14, paragraph 2, shall apply *mutatis mutandis*.
4. The benefits provided for in paragraph 1 shall be granted  
in x  
by .....,  
in y  
by ..... .
5. For the reimbursement of the cost of benefits in kind provided under paragraph 1, the provisions of Article 18 shall apply *mutatis mutandis*.

**Article 26**

Aggravation of an occupational disease for which benefit has been awarded

Where a person having contracted an occupational disease has received or is receiving compensation from the institution of either Contracting Party, and, in the event of an aggravation of his condition, claims benefit from the institution of the other Contracting Party, the following provisions shall apply:

- (a) if the person concerned has not engaged, under the legislation of the second Contracting Party, in an occupation liable to cause or aggravate the disease in question, the competent institution of the first Party shall bear the cost of benefit,

taking the aggravation into account, in accordance with the provisions of the legislation which that institution applies;

- (b) if the person concerned has engaged in such an occupation under the legislation of the second Contracting Party, the competent institution of the Contracting Party shall bear the cost of benefit, leaving the aggravation out of account, in accordance with the provisions of the legislation it applies: the competent institution of the second Contracting Party shall grant to the worker a supplementary benefit the amount of which shall be equal to the difference between the amount of benefit due after the aggravation and the amount of benefit that would, in accordance with the provisions of the legislation which that institution applies, have been due before the aggravation if the disease in question had been contracted under the legislation of that Contracting Party.

## SECTION 5

### UNEMPLOYMENT BENEFIT

#### Article 27

##### Aggregation of periods of insurance

1. If the legislation of either Contracting Party makes entitlement to benefit conditional upon the completion of periods of insurance, the competent institution of that Party shall take account, to the extent necessary, of periods of insurance completed under the corresponding legislation of the other Contracting Party, in so far as they do not overlap, as if they were periods completed under the legislation of the first Party.
2. The provisions of the preceding paragraph of this article shall apply *mutatis mutandis* where the legislation of either Contracting Party provides that the length of the period for which benefit may be granted depends on the lengths of the periods completed.

#### Article 28

##### Frontier workers

1. 1. A frontier worker who is partially or intermittently unemployed in the undertaking which employs him shall be entitled to benefit in accordance with the provisions of the legislation of the Contracting Party in whose territory the undertaking is located as if he were residing in the territory of that Party; these benefits shall be provided by the competent institution.

##### Alternative 1

2. A frontier worker who is wholly unemployed shall be entitled to benefit in accordance with the provisions of the legislation of the Contracting Party in whose territory he resides as if he had been subject to that legislation while last employed; this benefit shall be provided by the institution of the place of residence at its own expense.

##### Alternative 2:

2. 2. A frontier worker who is wholly unemployed shall be entitled to benefit in accordance with the provisions of the Contracting Party in whose territory the undertaking who last employed him is located, even if he resides in the territory of the other Contracting Party. These benefits shall be provided by the institution of the place of residence at the expense of the competent institution of the Contracting Party in whose territory the undertaking is located.

3. A frontier worker may not claim benefits under the legislation of the Contracting Party in whose territory he resides while he is entitled to benefits under the provisions of paragraph 1.

## **SECTION 6**

### **FAMILY ALLOWANCES**

#### **Article 29**

##### Aggregation of periods of insurance

If the legislation of either Contracting Party makes entitlement to benefits conditional upon the completion of periods of insurance, the competent institution shall take account, to the extent necessary, of periods of insurance completed under the legislation of the other Contracting Party, insofar as they do not overlap, as if they were periods of insurance completed under the legislation of the first Party.

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#### **Article 30**

##### Provision of family allowances

###### Alternative 1:

1. Persons who are subject to the legislation of either Contracting Party shall be entitled, in respect of the members of their family who are resident in the territory of the other Contracting Party, to the family allowances provided for by the legislation of the first Contracting Party, as if those members of the family were resident in the territory of that Contracting Party.
2. The family allowances shall be paid in accordance with the provisions of the legislation of the Contracting Party to whose legislation the beneficiary is subject, even if the beneficiary is resident or is located in the territory of the other Contracting Party. In that case, by agreement between the competent institution and the institution of the place of residence of the members of the family, the family allowances may also be paid through the latter institution on behalf of the competent institution.

###### Alternative 2:

1. Persons who are subject to the legislation of either Contracting Party shall be entitled, in respect of the members of their family who reside in the territory of the other Contracting Party, to the family allowances provided for by the legislation of the second Party, as if such persons were subject to its legislation.

###### alternative a



2. The family allowances shall be paid to the members of the family by the institution of their place of residence, in accordance with the provisions of the legislation which that institution applies, at the expense of the competent institution, in an amount not exceeding the amount of benefit payable by the latter institution.

*alternative b*

2. Where the members of the family of a person who works or resides in the territory of a Contracting Party reside in the territory of the other Contracting Party, family allowances shall be paid to them by and at the expense of the institution of their place of residence.

**Article 31**

Provision of family allowances

Where entitlement to family allowances exists according to the legislation of both Contracting Parties with regard to the same family member and the same period, the family allowances shall be provided in accordance with the legislation of the Contracting Party in whose territory the family member resides and entitlement to the family benefits due in accordance with the legislation of the other Contracting Party is suspended up to the amount provided for in the legislation of the former Contracting Party.

## **PART IV**

### **MISCELLANEOUS PROVISIONS**

#### **Article 32**

##### Arrangements for administration and co-operation

1. The competent authorities of both Contracting Parties shall determine the administrative measures necessary for the application of this Agreement.
2. The competent authorities of both Contracting Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their national legislation in so far as these changes affect the application of this Agreement.
3. The competent authorities of both Contracting Parties shall establish liaison bodies for the purpose of facilitating the implementation of this Agreement.
4. The competent authorities and institutions of the two Contracting Parties shall assist one another on any matter relating to the application of this Agreement as if the matter affected the application of their own legislation. Such assistance shall be free of charge.
5. If a person resides or stays in the territory of either Contracting Party has claimed, or is receiving, benefit under the legislation of the other Contracting Party and a medical examination is necessary, the competent institution or the institution of the place of residence or of temporary residence of the first Contracting Party shall arrange for such examination if the competent institution of the latter Contracting Party so requests. The cost of the examination shall, in principle, be met by the competent institution of the Contracting Party which has requested the examination
6. Unless disclosure is required under the legislation of either Contracting Party, any information about an individual which is sent to that Contracting Party by the other Contracting Party in accordance with, and for the purposes of, this Agreement shall be deemed confidential and be used only for the purpose of implementing this Agreement and the legislation to which this Agreement applies.

### **Article 33**

#### Use of official languages

1. For the purposes of the application of this Agreement, the authorities and the institutions of the two Contracting Parties may communicate with one another and with all interested parties, whatever their place of residence, directly in their official languages.
2. No claim or document shall be rejected on the ground that it is written in an official language of the other Contracting Party.

### **Article 34**

#### Exemption from charges and authentication

1. If the legislation of either Contracting Party provides that any certificate or other document which is submitted under the legislation of that Contracting Party shall be exempt, either wholly or partly, from any taxes, legal dues, consular fees or administrative charges, such exemption shall apply to any certificate or other document which is submitted under the legislation of the other Contracting Party or in accordance with this Agreement.
2. All statements, documents and certificates of any kind required to be produced for the purposes of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

### **Article 35**

#### Submission of a claim or appeal

Any claim or appeal which should, for the purposes of the legislation of either Contracting Party, have been submitted within a prescribed period to an institution of that Contracting Party shall be treated as if it had been submitted to that institution if it is submitted within the same period to a corresponding institution of the other Contracting Party.

### **Article 36**

#### Liability of a third party

If a person is receiving benefits under the legislation of either Contracting Party on account of an injury caused or sustained in the territory of the other Contracting Party, the rights of the paying institution liable to pay benefits against the third party liable to pay damages shall be regulated in the following manner:

- (a) where the said institution, under the legislation applicable to it, is substituted for the beneficiary in any rights which he may have against the third party, such substitution shall be recognised by the other Contracting Party; and
- (b) where the said institution has a direct right against the third party, such right shall be recognised by the other Contracting Party.

### **Article 37**

#### Recovery of undue payments

1. 1. If, during the assessment or revision of invalidity, old-age or survivors' benefit under the provisions of the Agreement, the institution of either Contracting Party has paid to a beneficiary a sum in excess of his entitlement, it may request the institution of the other

Contracting Party responsible for the payment of corresponding benefit to that person to deduct the amount overpaid from any arrears payable due to him. The latter institution shall transfer the amount so deducted to the creditor institution. If recovery cannot be made in this way, the provisions of the following paragraph shall apply.

2. Where the institution of either Contracting Party has paid to a beneficiary a sum in excess of his entitlement, that institution may, on the conditions and to the extent permissible under the legislation it applies, request the institution of the other Contracting Party responsible for the payment of benefit to that person to deduct the amount overpaid from the payments it is making to him. The latter institution shall deduct that amount to the extent to which such deduction is permissible under the legislation it applies, as if the overpayment had been made by it, and shall transfer the amount so deducted to the creditor institution.
3. Where the institution of either Contracting Party has made an advance payment of benefit for a period during which the beneficiary was entitled to corresponding benefit under the legislation of that Contracting Party, it may request the institution of the other Contracting Party to deduct the amount of the advance from payments due to him for the same period. The latter institution shall deduct the amount and transfer it to the creditor institution.

### **Article 38**

#### Enforcement procedures

1. Enforceable court decisions of either Contracting Party as well enforceable documents issued by an authority or institution of either Contracting Party, in respect of social security contributions and other claims shall be recognised in the territory of the other Contracting Party.

2. Recognition may be refused only if it is contrary to the public order of the Contracting Party in whose territory the decision or document should be enforced.
3. Enforceable decisions and documents recognised under paragraph 1 of this Article shall be enforced in the territory of the other Contracting Party. The enforcement procedure shall be in compliance with the legislation governing the enforcement of such decisions and documents of the Contracting Party in whose territory enforcement takes place. The decision or document shall be accompanied by a certificate indicating its enforceability (enforcement clause).
4. Overdue contributions to the institution of either Contracting Party shall, in any bankruptcy procedure or enforced settlement in the territory of the other Contracting Party, have the same precedence as equivalent claims in the territory of that Contracting Party.

### **Article 39**

#### Currency of payment

1. Payment of any benefit in accordance with this Agreement may be made in the currency of the Contracting Party whose competent institution makes the payment, and any such payment shall constitute a full discharge of the obligation in respect of which payment has been made.
2. If, under this Agreement, the institution of either Contracting Party is liable to pay sums by way of a refund of benefit provided by the institution of the other Contracting Party, its liability shall be expressed in the currency of the second Party. The former institution may validly discharge its liability in that currency, unless the Contracting Parties have agreed on other arrangements.

### **Article 40**

#### Resolution of disputes

1. The competent authorities of both Contracting Parties shall make all reasonable efforts to resolve through mutual agreement any dispute about the interpretation or application of this agreement.
- [2. If any dispute cannot be resolved as is specified in the preceding paragraph, it shall be submitted, at the request of the competent authority of either Contracting Party, to an arbitration tribunal which shall be composed in the following manner:

- (a) each Contracting Party shall appoint an arbitrator within one month from receipt of the request for arbitration. The two arbitrators shall appoint a third arbitrator, who shall not be a national of either Contracting Party (within two months from the date on which the Contracting Party which was the last to appoint its arbitrator notified the other Contracting Party of the appointment);
  - (b) if, within the prescribed period, either Contracting Party fails to appoint an arbitrator, the other Contracting Party may request the President of the International Court of Justice or, in the event of his having the nationality of one of the Contracting Parties, the Vice-President or next senior judge of that Court not having the nationality of either Contracting Party, to make the appointment. A similar procedure shall be adopted at the request of either Contracting Party if the two arbitrators cannot agree on the appointment of the third arbitrator.
3. The decision of the arbitration tribunal, which shall be binding on both Contracting Parties, shall be by majority vote. The arbitration tribunal shall determine its own rules of procedure, and its costs shall be borne equally by both Contracting Parties.]

## **PART V**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 41**

##### Transitional provisions

##### Alternative 1:

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1. This Agreement shall confer no rights for any period before its entry into force.
2. All periods of insurance completed under the legislation of a Contracting Party before the entry into force of this Agreement shall be taken into account for the purpose of determining rights arising from this Agreement.
3. Subject to paragraph 1 of this Article, rights may arise under this Agreement even in respect of a contingency which arose before its entry into force.
4. Any benefits due only by virtue of this Agreement shall be determined, at the request of the person concerned and in accordance with the provisions of this Agreement, with effect from the entry into force of this Agreement, unless the rights previously determined have given rise to a lump-sum payment.

5. Where the request referred to in paragraph 4 of this Article is submitted within two years of the entry into force of this Agreement, the rights arising in accordance with the provisions of this Agreement shall be acquired as from that date, and those provisions of the legislation of either Contracting party concerning the forfeiture or limitation of rights shall not be invoked against the person concerned.
6. Any benefit which has been determined before the date of entry into force of this Agreement shall not be recalculated.

Alternative 2:

1. Any right to benefit acquired by a person before the date of entry into force of this Agreement shall be retained. For the purposes of this paragraph, the expression "any right to benefit acquired" shall include any right which a person would have had but for his failure to claim in time where a late claim is allowed.
2. If, from the date of entry into force of this Agreement, any claim to benefit has not been determined and where entitlement thereto arose before that date, the claim shall be determined under the legislation applicable at the date of entitlement and shall be determined afresh in accordance with this Agreement from its date of entry into force. The amount determined under this Agreement shall be awarded from the date of its entry into force if such amount is more favourable than that determined under the legislation applicable before that date.
3. Benefit, other than lump-sum payments, shall be payable in accordance with this Agreement in respect of events which happened before the date of its entry into force, except that an occupational injury sustained or an occupational disease contracted before that date shall not, solely by virtue of this Agreement, be treated as an occupational injury or occupational disease if it would not have been so treated under any legislation or Agreement in force at the time of its being sustained or contracted. For the purpose of determining claims in accordance with this Agreement, account shall be taken, to the extent necessary, of periods of insurance completed before the date of its entry into force.
4. The Agreement shall not confer any right to benefit in respect of any period before the date of its entry into force.
5. For the purposes of paragraph 1 and the first sentence of paragraph 3 above:
  - (a) any right to benefit shall, at the request of the person concerned, be determined afresh in accordance with this Agreement with effect from the date of entry into force of this Agreement provided that the request was made within two years after the date it enters into force and, if applicable, benefit shall be awarded at the higher rate from the latter date;

- (b) if the request for benefit to be determined afresh is made more than two years after the date of entry into force of this Agreement, the payment of benefit and of any arrears shall be made in accordance with the legislation concerned.

#### **Article 42**

##### Ratification

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.
2. The Agreement shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

#### **Article 43**

##### Duration of the Agreement

This Agreement shall remain in force indefinitely. Either Contracting Party may denounce it for the end of a calendar year by giving three months notice in writing to the other Contracting Party.



## Article 44

### Termination of the Agreement.

1. In the event of denunciation of this Agreement, all rights acquired under its provisions shall be maintained.
2. 2. Rights in process of acquisition in respect of periods before the date on which the denunciation takes effect shall not lapse as a result of the denunciation; their subsequent continued recognition shall be determined by agreement or, failing such agreement, by the legislation which the institution concerned applies.

*In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.*

*Done at (...), on (...), in two copies in the (...) and (...) languages, both texts being equally authoritative.*

**EXPLANATORY REPORT**  
**ON THE MODEL PROVISIONS FOR THE**  
**CO-ORDINATION OF SOCIAL SECURITY SCHEMES**  
**IN BILATERAL AGREEMENTS**

**Introduction**

1. The co-ordination of different countries' social security schemes is designed to deal with the specific problems experienced by migrants specifically as a result of their status as aliens. To be effective, such co-ordination must involve the elimination of discriminatory provisions based on nationality, the neutralisation of restrictions on the territorial scope of legislation, the drawing up of national insurance records for migrants and the establishment of co-operation between national social security institutions and bodies responsible for granting benefits, as well as the apportionment of any costs of mutual assistance in administrative matters.
2. Co-ordination entails the application, in one form or another, of four basic principles designed to offer migrants comprehensive protection:
  - equality of treatment: in the States bound by the instrument, migrants must have the same social security rights and obligations as nationals in the same circumstances;
  - determination of applicable legislation: it must be ensured that migrants are, in relation to the same professional occupation, subject to the provisions of only one country;
  - retention of acquired rights: only benefits entitlement which has been or is being acquired in a State bound by the instrument must remain available to the migrant concerned in any other State;
  - provision of benefits abroad: the provision of benefits acquired in either State must be ensured for beneficiaries in the other State bound by the instrument.
3. The rules pertaining to co-ordination are designed to ensure that different countries' schemes are linked together, without creating a common social security system. If the rules are to be effective, therefore, account has to be taken of the specific features of each relevant body of legislation. In particular, it is necessary to establish a link between insurance-based and universal schemes and ensure equitable entitlement to benefits whose level is not related to the length of reference periods completed, as well as ensure that non-contributory benefits granted without a means-test are payable abroad.
4. Bilateral instruments, based on the legislation of two contracting states, offer an approach which is particularly suited to the requirements of the countries' legislation. However, bilateral instruments do not usually resolve the difficulties of citizens of

other countries who are subject to the legislation of the two contracting states; it depends on the personal scope.

Explanations concerning the terms of each article of the model provisions are set out below in so far as such explanations are considered necessary.

## **Article 1**

### Definitions

This article contains definitions of the concepts used in the Agreement. To make these concepts clear it is necessary to define everything not defined in the same way under both countries' legislation as well as provide appropriate clarification in cases where different words are used in both countries' legislation to cover the same or parallel contingency and/or benefit.

Article 1 (a):

The formulation "x means ..... and y means ....." in Article 1 (a) is used for practical reasons in order to allow for abbreviations of Contracting Parties' names. Example: Austria means Republic of Austria, or U.K. means The United Kingdom of Great Britain and Northern Ireland.

## **Article 2**

### Material scope

1. The majority of bilateral instruments concluded between the countries of Western Europe cover all the contingencies provided for in social security legislation. This is why they are often called "general social security conventions". Some, however, are confined to a limited number of contingencies.
2. In addition, such instruments normally cover general schemes which apply without distinction to all those concerned, for example employed persons, the working population or residents. They may extend jointly or separately to special schemes which apply to only one specific occupational category (miners, fishermen, self-employed workers).
3. Finally, depending on the circumstances, bilateral instruments can apply both to contributory and to non-contributory schemes (ie schemes providing benefits, the granting of which does not depend on a direct contribution either by the persons protected or by their employer).
4. The actual material scope of an agreement can either be described by quoting the legal base or national schemes (e.g. "federal law on sickness insurance" or "sickness insurance" - Alternative 1) or by referring directly to the different benefits (following

the approach of Alternative 2 of Article 2 of the European Convention on Social Security ).

### **Article 3**

#### Personal scope

In general, bilateral instruments apply to all nationals of the Contracting States, in so far as they are covered by legislation on the matters covered by these instruments. As a result, the instruments may cover all categories of workers (employed, self-employed, frontier, seasonal and so on) or all residents, including those with no occupation in the case of a limitation to the nationals in general. They also apply to the family members of nationals of the contracting states and to their survivors, whatever their nationality, when their rights derive from rights acquired by those nationals. Some of these bilateral instruments are based on a broader personal scope which is extended to all insured persons, irrespective of their nationality, stateless persons and refugees, members of their families and their survivors resident in the territory of one of the contracting states.

### **Article 4**

#### Equal treatment

1. National legislation and practice frequently restrict equality of treatment between nationals and non-nationals, particularly regarding benefit entitlements. The categories of benefit most frequently concerned include all sorts of non-contributory benefit under transitional schemes, unemployment benefit and family allowances. In addition, situations such as residence abroad often lead to restrictive legal provisions, particularly with regard to invalidity, old-age and survivors' benefits, as well as benefits in respect of occupational injuries and diseases. This is why the different coordinating instruments lay down the principle of equality of treatment. Existing bilateral instruments generally provide for the application of this fundamental principle, whereby nationals of either contracting state are subject to the obligations and entitled to the benefits of the other contracting state's legislation on the same conditions as the latter's own nationals.
2. However, bilateral instruments do not grant general and unconditional equality of treatment in every case. They are usually based on the principle of reciprocity, making nationality of one of the contracting states a condition, although an increasing number of instruments do also provide for the equality of treatment of all persons who are or have been subject to the legislation of the contracting states. Moreover, depending on their nature and general approach, national systems may

include conditions concerning the period of residence required for the grant of certain benefits or the place where they can be provided. Thus, equality of treatment with regard to non-contributory benefits is often subject to the completion of a certain period of residence. This requirement is particularly understandable in the case of long-term benefits awarded without any other qualifying conditions.

## **Article 5**

### Export of benefits

This article provides with the exception provided under paragraph 2 the export of benefits; this is necessary to override national legislation which normally restricts the payment of benefit to persons residing in the country's territory.

Upon mutual agreement, it may also be provided in the bilateral Agreement that where the beneficiary is residing in a third State, the benefit be paid in this State.

## **Articles 7 and 8**

### Applicable legislation

1. The rules governing the applicable legislation are designed to ensure that migrants do not fall into either of the following two situations: no protection in any country or simultaneous protection in two countries. Protection is sometimes afforded to those resident in the country concerned, sometimes to those who work in the country. In the absence of co-ordination, the application of the different criteria for affiliation to national social security schemes could lead to conflicts of law. For example, a negative conflict of law may arise where the person concerned is not protected in either country. In other circumstances, the conflict may be positive, the person concerned being protected simultaneously in both countries. These anomalies, posing a potential threat to migrants' interests, must be eliminated by means of co-ordination rules to supplement the national rules governing the relevant legislation.
2. International theory and practice have adopted the principle that only one country's legislation is applicable. Except in the case of voluntary insurance, the separate application of one or other branch of a national system is not normally recognised, at least in the instruments concluded by countries with developed social security systems. Such a distinction between branches would conflict with the unitary nature of the majority of systems and create administrative complications outweighing any advantages it might offer. Moreover, it is not the practice to allow claimants to decide which system will apply to them, since they would inevitably opt for the one

which offered the greatest advantages. However, it should be noted that certain bilateral instruments do permit the simultaneous application of both Contracting Parties' legislation, in cases where the individual concerned is engaged in different, but concurrent, occupational activities in the two countries.

3. An examination of bilateral instruments reveals that the criteria for determining the applicable legislation are varied and complex. The choice does not arise in the case of non-working persons since the only criterion applicable to them is place of residence. The situation therefore varies according to whether employed migrants or other categories of workers are considered. The principal characteristics of the relevant countries' legislation, in terms of persons covered, are also a factor.
  
4. In the case of employed persons, the usual criterion is place of work, whatever their country of residence or the country in which the undertaking to which they are attached has its registered office. Under this criterion, immigrant workers are subject to the legislation of the country of immigration, while frontier and seasonal workers are likewise subject to the legislation of the country where they perform their regular or seasonal work, even though they continue to reside in their country of origin. The legislation applicable to self-employed persons may also be based on the place where they engage in their occupational activity or on to their place of residence.
  
5. Special rules are required for categories of migrant workers to whom the general rules cannot apply. These rules vary from country to country according to the nature and conditions of work of the categories concerned. Examples of such special cases include workers posted to a foreign country, who often retain the right to remain subject to the legislation of their country of origin for a certain period so as to take account of the temporary nature of their posting, itinerant workers such as international transport workers or certain commercial representatives who normally work in the territories of two or more countries, and seafarers. The criterion applied to itinerant workers is generally based on the country in which the undertaking has its registered office or, failing that, the place of residence of those concerned, while for seafarers it is either the country whose flag the ship flies or its country of registration.
  
6. In Article 7, the provisions in respect of applicable legislation only provide for a solution concerning active persons. It is being recognised, however, that in certain countries social insurance systems are residence-based. Therefore, a different solution would have to be chosen for these countries.
  
7. With regard to Article 8, paragraph 1, any further provision for accompanying family members may be added, but then a solution would have to be found concerning those family members who take up employment in the country of secondment of the head of the family.

## **Article 9**

## Personnel of international transport undertakings

Article 9 deals with the coverage of workers in the international transport industries. It provides that if such a worker is:

1. ordinarily resident in either country and is wholly or mainly employed there, he is covered by that country's legislation; otherwise
2. if he is employed by a branch or agency of his employer's business located in either country, he is covered by that country's legislation, failing which
3. he is insured under the legislation of the country in which his employer has his registered office.

The article places emphasis on the country of residence of the employee as the final determinant for liability for contributions. In most countries, liability for contributions rests with the employer. Therefore, logic might dictate that the registered office should determine where liability for contributions should lie, rather than the employee's country of residence. But applying such a provision could lead to the person being insured under the legislation of a country in which he has never lived. That is not reasonable. Nonetheless, in an effort to address the problem of obtaining contributions from an employer in a country other than the one in which the employee resides and, hence, where liability lies the administrative arrangements contain a co-operation provision.

## **Article 11**

### Diplomatic missions and consular posts

Article 12 determines the applicable legislation in respect of persons working at diplomatic missions or consular posts. As a rule members of diplomatic missions or consular posts are subject to the social security legislation of the sending State. This is also in conformity with the regulations provided for by the Vienna Convention on Diplomatic Relations.

Locally employed persons are in principle subject to the legislation of the receiving State. Persons who are nationals of the sending State, however, may opt to be covered by that State's legislation. In order to avoid administrative complications, this right of option can only be exercised once, within three months following the date on which the person concerned is engaged by the mission or post, or in the private service of an official of the mission or post, as appropriate.

## **Article 13**

### Aggregation of periods of insurance

This Article provides for the aggregation of periods of insurance according to the principle of retention of rights.

Paragraph 2 is a possible supplement to paragraph 1 to avoid undue overlapping of benefits where entitlement to benefits in one country does not depend on actual insurance but on insurance in a given period in the past.

## **Article 15**

### Residence in the other State

Persons who reside in the territory of a country other than the competent State will be entitled to benefits in kind which will be provided by the institution of the place of residence in accordance with the legislation applied by this institution, at the expense of the competent institution.

This arrangement was decided upon because it is normal for benefits in kind to be provided by the institution nearest to the beneficiary, which can contact him direct and carry out the necessary medical and administrative examinations.

Paragraph 4: similarly, under this paragraph members of the family will be entitled to benefits in kind in the country in which they reside.

## **Article 17**

### Pensioners and members of their family

Whereas the wording of alternative 2 corresponds with the wording of Articles 14 and 15 ("shall receive benefits in kind"), in alternative 1 the words "shall be subject to the legislation" are used (in conformity with part II). Accordingly, a pensioner receiving a pension from only one country shall be treated in the other country (i.e. his country of residence) as if he were a national of this country. Consequently, no additional provisions concerning the members of the family are required and Articles 14 and 15 are applicable without any reference made to them.

The third paragraph of this Article provides for the provision of benefits in kind for pensioners and members of their family by the institution of their place of residence.

During a stay in the other Contracting Party the provisions of Article 15 are applicable.

## **Article 19**



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Reimbursement  
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This provision was worded in alternative 1 as broad a sense as possible, but more restrictive solutions may be used as well, such as alternative 2.

The benefits provided according to the provisions of this Part of the Agreement by the institution of one Contracting Party at the expense of the competent institution of the other Contracting Party shall be refunded according to actual expenditure.

## **Article 20**

### Invalidity, old-age and survivors' benefits (Aggregation of periods of insurance)

According to the principle of the retention of rights in the course of acquisition, migrants are deemed to have a unified record on periods of insurance, even though they have been subject to both countries' legislation. Such legislation often makes the acquisition and extent of entitlement subject to a qualifying period. The length of this period varies according to the contingency.

This article deals with the various problems relating to the acquisition of rights - and in certain cases the extent of these rights - by persons who have successively come under the legislation of two countries, the periods completed under these countries' systems must be treated as if they had been completed under one and the same system. The procedure is designed to determine whether the conditions regarding length of insurance, employment, occupational activity or residence provided for in a country's legislation for the acquisition of rights or the determination of the extent of entitlement have been fulfilled by taking account, as far as necessary, of periods of insurance, employment, occupational activity or residence completed in other countries. This technique is referred to as the aggregation, or adding together, of periods. It thus becomes possible to add together periods of a different nature completed in two countries, having regard to how these periods are defined, which often depends on the relevant legislation, and the rules for conversion which are laid down by mutual agreement in the applicable instruments.

## **Article 21**

### Award of benefits

The aggregation of periods for the purpose of calculating benefit is based on the principle that the amount of a benefit, particularly a pension, payable under contributory and certain non-contributory schemes may depend on the length of the periods completed. The majority of instruments stipulate a generally accepted co-ordination approach (the so-called "pro rata" method), whereby the competent institution of each

contracting state concerned determines the theoretical amount of the pension which would be payable to the person concerned under the legislation it applies, if all the periods taken into account under the aggregation principle had been completed under that legislation, and then calculates the amount actually payable by itself on the basis of the periods completed under this legislation as a proportion of the total periods completed under the various countries' legislation to which the person concerned has been subject. However, when a contracting state's legislation stipulates that the amount of the pension is proportional to the length of the periods completed, the state's competent institution may calculate the pension directly. Moreover, if the amount which the person concerned may claim under a contracting state's legislation is greater than the sum of the elements of the pension calculated on a proportional basis, a supplement equal to the difference must be paid by the competent institution which applies this legislation. However, it should be noted that some bilateral instruments do not always use this system. In the absence of this safeguard, they allow those concerned to opt for the separate payment of pensions payable under the various countries' legislation to which they have been subject, instead of joint payment. But in another case it is always allowed.

The two alternatives for the calculation of benefits take that into account. Whereas in both alternatives the national entitlement is guaranteed if the application of Article 20 is not necessary for the entitlement to benefit, the two alternatives give different solutions for the other cases; alternative 1 provides for the "pro rata" calculation whereas alternative 2 enables a direct calculation without the necessity to know the exact amount of the periods of insurance of the other country.

Examples:

**Old-age pension**

	<u>Qualifying period</u>	<u>National calculation</u>
State A: 10 years	15 years	30% basic amount
State B: 20 years		1% for each year

Alternative 1:

A: Theoretical amount  $30\% + (20 + 10) \times 1\% = 60\%$   
 Benefit payable  $60\% \times 10/30 = \underline{20\%}$

B:  $30\% + (20 \times 1\%) = \underline{50\%}$  (pro rata:  $60\% \times 20/30 = 40\%$ )

Alternative 2:

A:  $(30\% \times 10/30) + (10 \times 1\%) = 10\% + 10\% = \underline{20\%}$

B:  $30\% + (20 \times 1\%) = \underline{50\%}$  (if no national entitlement: 40%)

## Invalidity pension

Contingency: age 46

	<u>Qualifying period</u>	<u>National calculation</u>
State A: 5 years	5 years in last 10 calendar years	1.5% for each year additional periods up to the age of 60
State B: 10 years		

### Alternative 1:

A: Aggregation according to the Convention

B: No aggregation

A: Theoretical amount:  $[(5 + 10) \times 1.5\%] + (14 \times 1.5\%) = 22.5\% + 21\% = 43.5\%$   
Benefit payable:  $43.5\% \times 5/15 = \underline{14.5\%}$

B:  $(10 \times 1.5\%) + (14 \times 1.5\%) = 15\% + 21\% = \underline{36\%}$  (Pro rata:  $43.5\% \times 10/15 = 29\%$ )

### Alternative 2:

A:  $(5 \times 1.5\%) + [(14 \times 1.5\%) \times \frac{5}{20}] = 7.5\% + (21\% \times 5/20) = 7.5\% + 5.25\% = 12.75\%$   
 $\frac{2}{3 \times 30}$

B:  $(10 + 1.5\%) + (14 \times 1.5\%) = 15\% + 21\% = \underline{36\%}$  (if no national entitlement: 25,5%)

Further models of calculation of the amount of benefits based on the "pro rata" method can be found in the Explanatory Report to the European Convention on social security. (Netherlands/Committee)

## Article 22

### Periods of insurance of less than one year

This article concerns the payment of benefit where the total period completed under the legislation of a Contracting Party is less than one year.

Paragraph 2 provides that, for the purpose of adding the periods together and the calculation of benefit, the institution of the other Contracting Party shall take into account the periods of less than one year completed under the legislation of the first Contracting Party.

## **Article 24 and 26**

### Occupational injuries and diseases benefits

If one contracting state's legislation makes entitlement to benefits in respect of occupational diseases conditional on the pursuit for a certain period of an activity likely to cause the relevant condition, the competent institution of that state must take account, as far as necessary, of periods in which similar activities were pursued under the legislation of the other Contracting Party. This rule is particularly concerned with sclerogenic pneumoconiosis, but it may be extended, by agreement between the states concerned, to other occupational diseases. It is generally accompanied by provisions relating to the apportionment of the associated costs of benefits, and the manner in which this apportionment should be determined.

Article 26 deals with the case where a worker suffering from an occupational disease has received or is receiving benefit in respect of that disease from the competent institution of one Contracting Party and claims benefits from the institution of the other Contracting Party because of an aggravation in his condition. Two possible situations are covered.

Sub-paragraph (a) covers the situation where an occupation likely to cause or aggravate the disease has not been carried on in the territory of the other Contracting Party, the competent institution which has already paid or is paying benefit in respect of such invalidity shall bear the cost of the added benefits payable for the aggravation.

Sub-paragraph (b) covers the situation where such an occupation has been carried on under the legislation of the other Contracting Party. In this case the institution which has already paid or is paying benefits in respect of the occupational disease shall continue to pay such benefits, without regard to the aggravation; the institution of the Contracting Party in whose territory the person concerned carried on the occupation likely to cause the aggravation shall bear the cost of a supplement equal to the difference between the amount which would be payable, after the aggravation, under the legislation it applies and the amount which would have been payable before the aggravation if the disease had been contracted in its territory.

## **Article 27**

### Unemployment benefits

In addition to the general provision of adding together periods of insurance aggregation (paragraph 1), paragraph 2 of this article provides, if under one legislation the period for which unemployment benefits are payable varies according to the length of the periods completed, all the rules governing the adding together of periods for entitlement to benefit will apply in the same way.

## **Article 28**

### Frontier workers

This Article provides that benefits due to a frontier worker who is partially or intermittently unemployed shall be at the expense of the competent institution of the Contracting Party in whose territory the undertaking is located.. These benefits shall be provided by the institution of the Contracting Party in whose territory the beneficiary resides.

For the frontier worker who is wholly unemployed, alternatives 1 provides that benefits shall be provided by the institution in whose territory the beneficiary resides at the expense of this institution. Under alternative 2 benefits shall nevertheless be at the expense of the institution of the Contracting Party in whose territory the undertaking in which the beneficiary was last employed is located.

## **Article 30**

### Provision of family allowances

#### Alternative 1:

This provides that entitlement to family allowances is determined in accordance with the legislation of the contracting party in whose territory the insured person is employed. Consequently, if the children of the person concerned are residing in the territory of a contracting party other than the competent State, they shall be treated as if they were residing in the territory of that State. In such cases, therefore, the person concerned may receive family allowances under the legislation of that State.

#### Alternative 2:

This provision guarantees to all members of the family in the country in which they reside the family allowances to which they would have been entitled if the person concerned, even though employed in another country, had been subject to the legislation of the country of residence of the members of the family.

## MISCELLANEOUS PROVISIONS

### Articles 32 and 33

#### Arrangements for administration and co-operation and use official languages

These articles are based on the standard provisions in the European Convention on social security and in bilateral agreements for administrative arrangements and co-operation.

Not all provisions will be needed in all agreements.

Paragraph 5 of Article 32 provides that, in principle, the competent institution of the Contracting Party requesting a medical examination in the territory of the other Contracting Party will reimburse the cost of such examination to the competent institution which has arranged for it.

It is possible, however, to provide for different financial arrangements for medical examinations organised in the territory of one Contracting Party at the request of the other Contracting Party or to provide that the cost of medical examinations arranged in the territory of one Contracting Party at the request of the other Contracting Party shall not be subject to any reimbursement by either Contracting Party.

### Article 35

#### Submission of a claim or appeal

This article refers specifically to a claim concerning one contracting party's benefit being wrongly submitted to the other contracting party. It does not mean that a correct claim concerning a specific benefit in one country may be treated as a claim to another related benefit in the other country.

### Article 38

#### Enforcement procedures

This Article deals with recognition and enforceability in the territory of one of the Contracting Parties, of decisions by a court and enforceable documents of the other Contracting Party, in respect of social security contributions and other claims.

For some countries, the inclusion of this kind of provision in bilateral Agreements may experience some difficulties according to their national legal system.

## **Article 39**

### Currency of payment

When the currency of either Contracting Party is not convertible, payments may be made either in the currency of the other Contracting Party, if the latter is convertible, or in any other convertible currency usable by the two Contracting Parties.

## **Article 40**

### Resolution of disputes

- This Article is necessarily very specific because, although it is not envisaged that relations will deteriorate to such an extent as to result in its provisions being invoked, if relations did break down some precise, binding arrangements could prove very useful.

## **Article 41**

### Transitional provisions

The provisions of this Article are based on the standard provisions in bilateral and multilateral instruments. Contrary to multilateral instruments in particular, paragraph 5 does not provide for a recalculation of benefits already determined mainly because of practical and administrative reasons.

## **Article 42**

### Ratification

This article is based on the standard provisions concerning the entry into force of bilateral agreements.

However, when the constitutions of Contracting Parties provide for different methods of ratification for the entry into force of bilateral agreements, such as for example an exchange of letters through diplomatic channels, no recourse would have to be taken to the method of ratification stipulated in this article.