

. **European Agreement on "au pair" Placement** ([ETS No. 68](#))

Explanatory Report

I. The European Agreement on "au pair" Placement, drawn up within the Council of Europe by the Social Committee, was opened for signature by the member States of the Council of Europe on 24 November 1969.

II. The text of the explanatory report of this Agreement does not constitute an instrument providing an authoritative interpretation of the text of the Convention although it might be of such a nature as to facilitate the application of the provisions therein contained.

General considerations

The European Agreement on "au pair" Placement comprises :

- a preamble,
- 22 articles,
- 2 annexes, the first of which sets forth the benefits to which persons placed "au pair" will be entitled in case of illness, maternity and accident, and the second concerns the agreed reservations,
- an appended protocol.

The Council of Europe's action attempts to help settle a problem of ever-increasing magnitude, as the number of young persons going abroad to improve their knowledge of languages has risen constantly since the end of the second world war. School and university exchanges, study grants, holiday visits arranged by schools or youth organisations no longer suffice, despite their continual expansion, to satisfy young people's desire to widen their horizons, to know other countries or other ways of life.

"Au pair" placement, which has existed for a long time, is therefore particularly popular for it enables them to get to know a country thoroughly without too much cost and even, in the case of adolescents, without their family having to keep them during the placement period.

But although that form of placement is not new, its nature has changed. Arranged in the past on a friendly basis between families known to each other, or through mutual acquaintances, it has now become a unique social phenomenon because of the frequency and large number of persons involved. It is now by tens of thousands that the candidates travel throughout Europe and it is quite obvious that the uncontrolled development of such temporary migration cannot be allowed to continue if only in the interests of the parties concerned. Hence the need to seek a solution of this international problem by international regulation in the

case in point, a European agreement.

Background

In November 1964, Mrs. Hubert and others tabled in the Consultative Assembly of the Council of Europe a motion for a recommendation on "au pair" employment. After the motion had been examined by the Social Committee, a report (Doc. 2072) was submitted to the Consultative Assembly which, at its sitting of 29 September 1966, adopted a recommendation to which were attached "Draft rules on 'au pair' employment". The recommendation, as No. 468 (1966), was transmitted to the Committee of Ministers.

In the meantime, at the end of 1965, the Committee of Ministers had included, in the 1966 Intergovernmental Work Programme of the Council of Europe the same subject under the heading: "Living and working conditions of 'au pair' girls : preparation of a convention".

The work to be done on that item in the Work Programme was entrusted to the governmental Social Committee which set up a sub-committee composed of experts from the principal home and receiving countries of the young people seeking "au pair" posts. In 1967, the sub-committee prepared a draft convention which was submitted to its parent body. The latter amended the text and transmitted it to the Committee of Ministers who, after discussing it on several occasions, decided to open it for signature in October 1969 in the form of a European Agreement.

Comments on the provisions of the Agreement

Preamble

The text of the preamble to the Agreement is largely the same as that usually adopted for Council of Europe conventions and agreements.

The first recital of the preamble is a direct reference to Article 1 of the Statute of the Council of Europe, regarding the aims of the Council ; at the same time, the paragraph emphasises the social motives which prompted the preparation of the Agreement.

The fourth recital stresses the international and European nature of the problem of "au pair" placement.

The fifth recital is of particular importance in relation to Article 2 of the Agreement (cf. comments below on that article).

The seventh recital stresses that one of the principal preoccupations in preparing the Agreement was the interest attaching to the moral protection of "au pair" persons in so far as they were still under age.

The eighth recital emphasises the public authorities' role in guaranteeing and controlling the application of the principles set forth. It is a precursor to Articles 4, 6, paragraph 2, 12 and 13.

Article 1 – The general scope of the obligations of the Contracting States.

This article indicates the extent to which the Contracting States are bound by virtue of the Agreement.

The text of this article was drafted to make the Agreement as flexible as possible, so that account might be taken of situations prevailing in each country and thereby offer the greatest number of States the opportunity of ratifying the Agreement. In that respect, Article 1 is based on the formula appearing in certain ILO Conventions according to which the method of implementing these conventions should take account of national situations.

Despite the words "to the greatest extent possible" given in this article, it comprises more than a mere moral obligation. In fact, it compels the Contracting States to take all possible measures in the form not only of regulations but also of legislation. The word "possible" should therefore be taken to mean that each Contracting State must take whatever measures are necessary, unless it is impossible to do so for legislative, parliamentary or administrative reasons, or because of the existence of an objective situation. If, for example, it were objectively impossible in a Contracting State to take the measures required under the Agreement, the absence of such measures would not constitute a violation of the instrument.

Article 2 – Definitions

This article sets forth the definitions necessary to the interpretation and application of the other provisions in the Agreement.

Paragraph 1

This paragraph gives a general definition of "au pair placement" within the meaning of this Agreement.

It shows that the form of placement envisaged is more restricted than the general definition. Whereas "au pair" placement might be defined as consisting of reception (that is to say board and lodging) in return for services, it is here specified, among other things :

- that the "au pair" placement must be of a "temporary" nature,
- that its purpose must be cultural,
- that the persons placed must be foreigners,
- and that the placement must be made in families.

As regards the last point, it should be pointed out that the Agreement is not applicable to placements in institutions or collective bodies.

As regards persons covered, considering that there was no call to make a discrimination by seeking to protect young women only and that certain tasks, such as the supervision and intellectual training of children, were suitable to young men, the negotiators of the Agreement conceived the text as applying to young men and women, while at the same time recognising that the latter formed the great majority of the beneficiaries. Nevertheless, taking account of the fact, among others, that in certain countries "au pair" placement is not considered suitable for young men

who would be better advised to find work, for example, as trainees, the Contracting Parties have the possibility of entering a reservation to exclude young men from the Agreement's scope of application. (cf. Annex II (a).)

In order to determine the purport of this paragraph it is also important to take account of the fifth recital in the preamble where it is stated that "persons placed 'au pair' belong neither to the student category nor to the worker category but to a special category which has features of both ...".

Paragraph 2

In referring to the previous paragraph, this paragraph defines the meaning of the term "persons placed au pair" used in Article 3, et seq. of the Agreement.

It is important to note that so far as its application to persons is concerned, the Agreement is not confined to nationals of the Contracting States ; the Agreement's provisions apply to any person placed "au pair" in the territory of any Contracting State without discrimination as to that person's nationality.

Article 3 – Duration of the "au pair" placement

Under this article, the 'au pair" placement may comprise

- an initial period of not more than one year,
- one or several extensions.

The aggregate of those periods (initial and extension(s)) may not however exceed a maximum of two years.

By limiting the maximum duration to two years, emphasis was placed on the temporary nature of the placements as set forth in Article 2, paragraph 1.

Article 4 – Age of persons placed "au pair"

Article 4, which has two paragraphs, sets forth certain age limits to be respected as regards "au pair" placement within the meaning of this Agreement.

Paragraph 1

This paragraph puts the general principle that a person placed "au pair" shall not be less than 17 nor more than 30 years of age.

Those age limits were fixed

- *as regards the lower limit of 17 years*: by bearing in mind that below that age school exchanges play a primary part and people are not generally mature enough to be placed "au pair" ;
- *as regards the upper limit of 30 years* : by bearing in mind the length of studies and the fact that, over that age, one was departing from the original purpose, i.e. the protection of young persons going abroad to improve their knowledge of languages.

It was noted that a Contracting State could specify a higher minimum age, or make admissibility of an "au pair" Placement, in view of the youth of the person concerned, depend on compliance with certain special conditions. For example, a Contracting State could make a regulation under which only young foreigners of at least 18 years of age would be eligible for "au pair" placement, and requiring, in the case of a 17 year old, the presence in that State of a legal representative.

Paragraph 2

This paragraph provides for an exception to the general rule set out in paragraph 1 of Article 4. However, the exception concerns only the upper age-limit of 30 years. Indeed, paragraph 2 of Article 4 lays down that "exceptions to the upper age-limit may be granted by the competent authority of the receiving country in individual cases when justified". Provision was made for the possibility of derogating from the *upper* age-limit in order to enable those persons wishing to undergo retraining to benefit, where applicable, from regulations on "au pair" placement. It takes account of the fact that studies are lasting longer and longer. On the other hand, there is no possibility of derogating from the lower age-limit, which places anyone below 17 years of age outside the Agreement's scope of application and should discourage such persons from seeking "au pair" placements.

The "competent authority" mentioned in paragraph 2 of Article 4 is the same as the one mentioned in Article 6, paragraph 2 and Article 12. It is a single authority appointed or instituted by the government of each Contracting State.

Article 5 – Medical certificate

This article provides that every person placed "au pair" shall have a medical certificate. It must be established less than 3 months before the placement and state the person's general state of health. It was agreed that the medical certificate would guarantee that the person concerned was not suffering from any infectious disease.

At one of the initial stages of preparing the Agreement, it was intended to replace the words "certificate... declaring that person's state of health", appearing in the final text of Article 5, by the phrase "certificate... declaring fitness to participate in day-to-day family duties". In the end, that drafting was not adopted for it appeared difficult to define what was meant by "day-to-day family duties".

Article 6 – Written agreement between the person placed "au pair" and the receiving family

It is important that the "au pair" person and the receiving family are clear about the rights and obligations arising from the arrangement they make. That is why a written undertaking is essential.

Article 6, composed of two paragraphs, specifies the form and other aspects of the written agreement between them which must therefore be the basis of any "au pair" placement.

The nature of that agreement was discussed at some length, some wishing it to be considered as an actual contract of employment, others not being able to accept that because, among other things, of strict regulations on the immigration of workers.

Moreover, once the principle of an agreement had been accepted, a compromise had to be found between two tendencies apparent at the outset of the preparatory work on the Agreement, namely that :

- it would be inadvisable to provide for the conclusion of a written agreement, mentioned in Article 6, before the person wishing to be placed "au pair" had left his country and had been in touch with the receiving family ; and
- it would be preferable to provide for the establishment of a document defining the conditions of the placement and authenticated, where applicable, by the competent authority before the person concerned commenced his activities and even before he had left his country of origin.

The compromise finally reached between those two tendencies was the adoption of a clause providing for the conclusion of a written agreement before the beginning of the placement "and at latest during the first week of the placement" (cf. Article 6, paragraph 1 in fine). The main advantage of this formula is to provide for a trial period before making the written agreement mentioned in Article 6. However, in order that those States which so desire might continue to require the prior conclusion of the written agreement, it was agreed that a Contracting Party could stipulate that this agreement be concluded before the "au pair" person left his country of residence (cf. Annex II (b)). A model agreement, prepared by the Council of Europe is reproduced here ([Model text \(Word format only\)](#)).

Paragraph 1

Among other things, this paragraph lays down

- that the purpose of the agreement provided for in Article 6 should be to determine "the rights and obligations of the person 'au pair' and the receiving family" in accordance with the Agreement ;
- that it should be in writing and consist either of one document or of an exchange of letters ;
- that it must be concluded, in principle, prior to the placement (cf. however, in that respect, the comments given on the preceding paragraph in the present explanatory report).

At one stage it was contemplated that the words mentioned above ("and the receiving family") should be replaced by the phrase "and of the member of the receiving family competent according to national legislation". However, that expression finally appeared less appropriate than the first, which stresses the importance of the general attitude of the receiving family.

As regards the phrase "parties in question", it should be specified that such persons must be determined by the relevant national legislation. The negotiators of the Agreement considered it preferable not to settle that question in the text itself, chiefly because of the many difficulties raised by the divergence of views on the definition of "minors".

Paragraph 2

The basis of this paragraph is that the Contracting Parties must organise the control of agreements by providing for a copy of the written agreement mentioned in paragraph 1 to be lodged "with the competent authority or the organisation chosen by this authority".

The "competent authority" mentioned in this paragraph is the same as that mentioned in paragraph 2 of Article 4 and in Article 12 ; the "organisation" is one of the public or private bodies entitled to deal with placement mentioned in Article 12.

It was agreed that the receiving family need not itself deposit a copy of the written agreement with the competent body; this may also be done by a third party or the "au pair" person concerned.

Article 7 – General conditions of placement to be specified in the written agreement

This article lays down that the general conditions of each "au pair" placement must be set forth in the written agreement mentioned in Article 6.

The text should therefore specify the services which the person placed undertakes to provide in exchange for hospitality, the proposed hours of work, the amount of pocket-money, that a weekly holiday will be granted, that facilities to improve knowledge of the language will be granted, the period of the agreement and the cancellation conditions (Article 11).

Article 8 – Obligations of the receiving family

This article sets forth, in four paragraphs, the main obligations which each family receiving an "au pair" person must observe in regard to that person. The obligations are, *inter alia*

- board and lodging (paragraph 1) ;
- provision of free time for linguistic, cultural and professional improvement (paragraph 2) ;
- the weekly "day off" (paragraph 3)
- pocket-money (paragraph 4).

Paragraph 1

The two principal benefits to be provided by the receiving family are: board and lodging in the family's home. In view of the housing situation in towns, the negotiators did not wish to make it obligatory to provide a separate room although every effort should be made to do so.

Paragraph 2

In defining the educational activities of the "au pair" person, the word "improvement" was used to show that there could be no question of his pursuing a professional activity or full-length training course. The fact that those concerned are given the opportunity to pursue cultural activities and studies rules out the possibility of clandestine work.

Since placement is not necessarily effected in towns where organised courses are held, the negotiators refrained from too strict a formula - e.g. one making it compulsory to register for courses.

Paragraph 3

The granting of a full free day per week, not less than one such free day every month being a Sunday, laid down by this clause should be considered to be the minimum.

Paragraph 4

This clause concerns "pocket-money" ; the term was used purposely in order to prevent the sum to be paid from being considered as a remuneration or a wage. It should be noted that the negotiators abstained from specifying the amount of pocket-money. It was found impossible to give guidance as to the amount, which varies with the customs of the countries and the mutual services rendered. Obviously, if families take "au pair" persons to the theatre, cinema etc., and do not leave them to their own devices on the weekly free day provided for, less pocket-money will be needed. Here again, what is important is that the situation be clearly defined between the two parties at the beginning of the placement.

Article 9 – Services to be rendered by the "au pair" person

Under the terms of this article, the services which the "au pair" person must render the receiving family consist of «participation in day-to-day family duties", that is to say, in particular, housework, cooking, looking after the children.

At one stage, it was suggested that Article 9 specify that "heavy work", such as window-cleaning, laundry etc., were excluded from day-to-day family duties required of the "au pair" person. However, the negotiators of the Agreement did not adopt that proposal because it appeared too difficult to assess such work. Indeed, most "heavy work" can be done nowadays by machines, which modifies its nature.

It was agreed that the services required of the "au pair" person could include looking after children, even at night.

It was considered that the time given to "day-to-day family duties" should, in principle, be limited to five hours a day.

Article 10 – Social security

This article, in three paragraphs, guarantees any "au pair" person the appropriate benefits in the case of illness, maternity and accident.

Its text is a compromise between several schools of thought, for,

although all delegations unanimously agreed during the preparatory work that social protection was essential, opinion varied as to how it should be provided.

The difficulty arose especially from the fact that in the absence of wages, affiliation to a national social security scheme was impossible in the majority of countries.

The following were the main viewpoints expressed

- firstly, Article 10 ought to have laid down the principle that the social security scheme of the receiving country should be automatically applied, except where the risks of sickness, maternity and accident are not covered by such a scheme, in which case the receiving family should contract a private insurance;
- the article should be based on the principle of equality of treatment and lay down that, in so far as a person placed "au pair" is not covered by national legislation or by an official or appointed body, the receiving family should contract an equivalent private insurance at its own expense ;
- finally, it would have been preferable to insert first a clause providing for the "au pair" person to be insured against the three risks previously mentioned, then to indicate how that insurance should be guaranteed and finally add an annex to the Agreement specifying the common minimum of the benefit to which he would be entitled.

The text of Article 10, which is a compromise between those various views, is adapted to cover both situations where "au pair" persons are eligible for the social security benefits of the country in which they are placed, and situations where no such scheme is applicable to them.

The first paragraph states that at the time the Agreement is signed, or subsequently (cf. Article 19), each Contracting State will set out in Annex I to the Agreement the benefits, irrespective of their nature, guaranteed within its territory (benefits under an official contributory scheme, under an official non-contributory scheme, or from private insurance etc.) and, in the second paragraph, it gives the essential arrangement to be made ; the third paragraph provides the possibility of subsequently modifying the list of benefits set out in the above-mentioned Annex 1.

Paragraph 1

It is provided here that the annex to the Agreement shall contain a list of benefits guaranteed within the territory of each Contracting State. In accordance with the Protocol to the Agreement, a notification listing the said benefits is made entirely on the responsibility of the notifying State. The Protocol also specifies that "as far as possible" those benefits shall include medical, pharmaceutical and hospitalisation expenses, such protection being considered to be a minimum.

Paragraph 2

This paragraph lays down the essential arrangement to be made for protecting "au pair" persons in those States where benefits set forth in Annex I to the Agreement are not guaranteed at all or only partially guaranteed by an official scheme or organisation : in such cases, "the competent member of the receiving family shall, at his own expense, take out a private insurance". But each Contracting Party may enter a reservation to the effect that only half the cost shall be borne by the receiving family (cf. Annex II (c)).

Such private insurance, where applicable, will provide as a minimum the guarantees set out in Annex I to the Agreement and, as stated above, will comprise, as far as possible, reimbursement of medical, pharmaceutical and hospitalisation expenses (cf. also : the Protocol attached to the Agreement).

The phrase "taking into account the provisions of international agreements or the Regulations of the European Communities" was inserted to ensure that the clause was without prejudice to the said Agreements or Regulations : i.e. implementation would not be prejudicial to the scope of those instruments, which should, therefore, prevail.

During the preparatory work, it was stated that the term "official schemes" in this paragraph referred, for example, to the National Health Service in the United Kingdom.

Paragraph 3

It follows from the text of this paragraph, taken in conjunction with Article 19, paragraph 2 and Article 21 sub-paragraph (i), that the notification for which it provides shall be addressed to the Secretary General of the Council of Europe who will inform all the Members of the Organisation as well as any other State that may accede to the Agreement.

Article 11 – Cancellation of the placement agreement

This article gives the possibilities for cancelling the written agreement mentioned in Article 6 of the Agreement.

The first paragraph deals solely with terminating a contract concluded for an indefinite period, in which case two weeks' notice shall be given.

Paragraph 2 concerns cancellation of an agreement concluded either for an unspecified or for a specified period and provides for the possibility of immediate termination (that is to say without notice) by one of the parties in the event of serious misconduct by the other, or if other serious circumstances so require.

The use of the expression "shall be entitled to terminate" and "may be terminated" appearing in paragraphs 1 and 2 respectively of Article 11 shows that cancellation is not obligatory, but is merely an option open under certain circumstances.

At one stage of the preparatory work, it was intended to make it obligatory for the receiving family to inform the local and consular

authorities, and the parents of the "au pair" person of his disappearance, or of any breach of the written contract mentioned in Article 6. Ultimately, however, such obligation was not prescribed since the majority of the negotiators considered it was a general matter which could be left to the discretion of the receiving families.

Paragraph 1

In the case of a contract concluded for an unspecified period, it should be pointed out that each party to the placement agreement, that is to say either the "au pair" person or the receiving family, may terminate it under this clause without being obliged to give any reason. The same may obviously apply to an agreement concluded for a specified period, and extended for an indefinite period ; in which case, however, termination by virtue of this paragraph can take effect only during the extension period.

Paragraph 2

According to this clause, the placement agreement mentioned in Article 6 of the Agreement "may be terminated with immediate effect :

- (a) in the event of "serious misconduct" by one of the parties, and
- (b) in the event of "other serious circumstances".

In the case of (a), the option to terminate lies with the other party. On the other hand, in the case of (b), both parties have that option. The hypothesis (b) covers, among other things, cases of *force majeure*.

Article 12 – Institutions entitled to deal with "au pair" placement

Article 12 was included in the Agreement because it is important to see that in each Contracting State only reliable organisations are concerned with "au pair" placement.

The phrase "shall appoint" was used to show that, subject to the general scope of the undertakings under this Agreement (cf. especially Article 1), the competent authority in each Contracting State would be obliged to appoint the "public bodies" mentioned in Article 12. It would also have the option of appointing "private bodies", for example, welfare societies or charities, with branches throughout the country and able, therefore, to take rapid action.

One of the functions of such public or private bodies may be to act as depositories for the written agreement mentioned in Article 6 (2). Their other tasks may include the general supervision of placement conditions, checking whether the written agreements deposited are in order, settling differences between "au pair" persons and receiving families, consultations etc.

Article 12 does not compel the Contracting States to communicate a list of appointed bodies to the Council of Europe, but the Council nevertheless has the possibility of being informed of them through the application of Article 13 and can, therefore, ensure wide circulation of national lists and thus facilitate the information of all concerned.

A reservation to Article 12 will be accepted (cf. Annex II (d)) in view of that fact that in some countries the listing of bodies concerned with "au pair" placement and the procedures for appointing them will inevitably take time. However, it is understood that the implementation of the clause may be deferred only for the strictly necessary period.

Article 13 – Five-yearly reports

By virtue of this article, each Contracting State undertakes to submit every five years to the Committee of Ministers a report on the application of Articles 1 to 12.

The third paragraph is of particular importance. It is in fact dynamic in purport inasmuch as it provides that the Social Committee of the Council of Europe "may also make any proposals designed to... improve the practical implementation... (of the Agreement, and to) ... amend or supplement its provisions ...".

Articles 14, 15, 16 and 17

These articles are the standard final clauses approved by the Committee of Ministers of the Council of Europe.

As regards paragraph 1 of Article 16, preference was given to an open Agreement because its scope of application was not restricted solely to nationals of member States of the Council of Europe.

Article 18

In accordance with Article 18, each signatory State, as well as each acceding State, has the right to make use of one or more of the four reservations, the texts of which are given in Annex II to the Agreement. No other reservation is allowed.

It should also be pointed out that Article 18 does not contain the usual reciprocity clause as it would be incompatible with the general character of the Agreement, which is not of the type to create reciprocal undertakings ; moreover, it would have been in contradiction with the field of application *ratione personae* of the Agreement since it is not limited solely to nationals of the Contracting States (cf. above : comments on Articles 2 and 16).

Articles 19, 20, 21 and 22

Articles 19 to 22 have been drafted according to the model approved by the Committee of Ministers.

Protocol

(Article 10)

This clause should be read in conjunction with Articles 10 and 22.