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Social Security Co-ordination and Social Security Reforms

**Capacity raising and institutional development
for the realisation of the negotiation process on
bilateral agreement in the area of social
protection**

**Family Benefits
in a Bilateral Social Security Agreement
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Prishtina, 6 and 7 May 2010

Types of Schemes

- **Social assistance type**
 - financed through taxes (from State Budget),
 - means tested
 - granted to nationals and residents, sometimes under the condition of prior residence period,
 - usually non-exportable.
- **Social insurance type**
 - based upon contributions of employed (self-employed),
 - often means tested,
 - sometimes exportable.
- **Other forms** – tax relief, lump-sum payments, benefits included in social assistance schemes, etc.

Ability to be co-ordinated and exported

- Social assistance and social insurance types of FB schemes are **subject to co-ordination** of social security schemes
- **Other types** cannot be co-ordinated
- FB are usually **excluded from export** of benefits under national legislations and also under agreements on social security
- **Agreements define one competent Contracting State** and provide for avoidance of overlapping of benefits

Types of Agreement Provisions

- Agreements according to which:
 - Only **the nationality** of the other Contracting State is taken into account for the benefit (applicatin of national scheme to nationals of the other Contracting State)
 - The **nationality** of the other Contracting State of the beneficiary + **the residence** of family members in the other Contracting State are taken into account
 - The **nationality** of beneficiary + **the residence** of FM in the other Contracting State + **the aggregation of periods** for the entitlement to FB

Aggregation of Periods

- **Aggregation of periods of insurance:**
 - **periods defined in Article 1:** contributions, occupational activity, residence and equivalent periods
- **No pro-rata benefit** – entitlement to the “independent” benefit only in **one** Contracting State,
 - Agreement provisions define the Contracting State competent for the award of benefits and
 - Resolve the positive and the negative conflict of legislations:
 - positive** – when the right exists in both Contracting States,
 - negative** – when neither Contracting State is competent

Example - positive conflict

- **STATE A:**

- FB conditional upon employment period of 3 years
- Person was employed for 5 years

- **STATE B**

- FB conditional upon 3 years of residence period
- Person resided 3,5 years and still resides there with family members

Entitlement in both States! - **positive conflict** of legislations
BUT

We can provide in the Agreement that the competent State is the State of residence
- either of family members or of the beneficiary!
(Here the State B would grant the benefits in both cases)

Example – negative conflict

- **STATE A**
 - Benefit conditional upon residence at the time of claim
- **STATE B**
 - Benefit conditional upon 3 years consecutive residence period

Person resided in State B for 1,5 year, then went to State A to work there for 5 years, then returned to State B and resided there for another 2 years and still resides there:

no right to FB in either of the States....

BUT if the Agreement would provide that the residence in one State is taken into account as the residence in the other State, then !!! - the person **would be entitled in BOTH States – negative conflict turned into positive!!!** Then we would also need the provision that the State of residence of family members or of the beneficiary would be the competent State

Positive Conflict of Legislations

If the **entitlement exists according to the legislation of both Contracting States:**

- Provision on avoidance of overlapping of benefits - usually the benefit is granted according to the legislation of the Contracting State where the family member **resides**
- The possibility of providing for the entitlement to the eventual **amount of difference** between the higher amount in one Contracting State and the lower amount of FB in the competent State

Allowance for Children

- **National legislation:**

- Countries in which parents and persons deemed as such (because taking care of children) – are entitled to child allowance for children **residing** with them in the same country
- Often the criteria of **nationality** is applied

- **Agreement:**

- parents and persons deemed as such are entitled to child allowance in one Contracting State for children **residing** in the other Contracting State,
- Entitled are **nationals** of both Contracting States

Children Allowance

- **National legislation:**

- Countries in which children themselves are entitled to child allowance while **residing** in the country of entitlement
- Often the criteria of **nationality** is applied

Agreement:

- Children **residing** in the Contracting State may be entitled to child allowance in that State,
- Entitled are **nationals** of both Contracting States

Application of National Scheme

- Sometimes Contracting States agree on the **application of national FB scheme** to nationals of the other Contracting State residing with family members in the same territory:
 - No aggregation of periods
 - No assimilation of the residence of family members in the other Contracting State
 - Provision on avoidance of overlapping, usually the Contracting State where the family member mostly resides is competent

Cro Example

- Croatia applies **24 bilateral agreements** on social security,
- **14 of which cover the FB scheme:**
 - Belgium, Czech Republic, Denmark, France, Italy, Luxembourg, Macedonia, Netherlands, Norway, Poland, Slovak Republic, Sweden, Switzerland, UK.

Cro Example

- **Two main types** of Agreement provisions on FBs:
 1. The person is entitled to FB in one Contracting State although the family members reside in the other Contracting State, of which
 - Some apply the aggregation of periods (Cro – 3 years of consecutive residence) and/or
 - Resolve the positive conflict of legislations
 2. The entitlement in the Contracting State in which the person (national of the other Contracting State) resides **WITH** family members

Administrative Arrangement

- **Forwarding of information** between liaison bodies of Contracting States:
 - on relevant **period** completed
 - On income and assets if necessary for the **means test**
 - On **family members** (names, ages, family relationship, certificates, including the one on undergoing the education, etc) and their place of **residence**
 - Mutual assistance between liaison bodies in **prevention of overlapping** of family benefits

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Thank you for your attention !