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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**

**General provisions
for a Bilateral Social Security Agreement
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Model Provisions for a Bilateral Social Security Agreement

- Made by the **Council of Europe** - Committee of Experts for the application of the European Convention on Social Security
- **Guide** for states in the process of negotiations of the social security co-ordination agreement
- **Flexible** provisions - not binding,
- **Simplifies** the process of drafting the agreement
- Covers **four basic principles** of social security co-ordination:
 - Equality of treatment,
 - Determination of applicable legislation,
 - Maintenance of acquired rights,
 - Export of benefits.

Preamble

- Expresses **the will of two states** to conclude the Agreement on Social Security
- The Agreement is concluded **by Governments** of Contracting Parties/States or **by States**:
 - “The **Government** of the Kingdom of Denmark and the Government of the Republic of Croatia, resolved to co-operate in the field of social security, have decided to conclude an Agreement for this purpose ...” ,
or
 - “**The Republic** of Croatia and New Zealand, hereinafter referred to as “the Contracting Parties”, resolving to co-operate in the field of Social Security, have concluded the following Agreement for this purpose...”
- Therefore in the **signatory block** at the end of Agreement, the Governments of States or only the States are listed

Five Parts

- **General provisions**
 - Definitions of terms, material and personal scope, equal treatment, export of benefits, overlapping of benefits
- **Determinantion of applicable legislation**
 - General coverage rule and special rules
- **Branches of social security**
 - Sickness and Maternity/ Invalidity, Old-age, Survivors' Benefits/ Death Grant/ Occupational Injuries and Diseases Benefits/Unemployment Benefit/Family Allowances
- **Miscellaneous provisions**
 - Administrative arrangements, dispute resolution, mutual assistance....
- **Transitional and final provisions**
 - Entering in force, ratification and denunciation

Definitions

- At the beginning of the Agreement - in **Article 1(1)**, based on the agreement of negotiating countries
- Model provisions are not binding, but most of them became **typical** as the result of negotiating practice
- Definitions **overcome the different national terminology**, and/or
- **Provide for clarification** of the same terms differently used in the legislation of each negotiating country, or
- **Make references** to each country's legislation

Typical definitions – State names

(a) “X meansand Y means....” - **definition of the state names** allows abbreviations in the entire Agreement text, e.g.:

- Cro/Australia Agreement has the definition only for Croatia: “Croatia” means the Republic of Croatia”, and the definition for Australia was not necessary,
- in some Agreements the definition of Contracting Party/State may be in the first place – Cro/Denmark Agreement: “Contracting Party” means, according to the context, the Kingdom of Denmark or the Republic of Croatia” (without abbreviations)
- Cro/NZ Draft Agreement: “New Zealand has the meaning given to it by the legislation of New Zealand” – Cook Islands, Niue and Tokelau are excluded by the NZ social security legislation (also the territorial aspect);

Typical definitions - territory

(b) “the term “**territory**” means...” – some states apply their social security legislation in the part of the territory, or sometimes the Agreement comprises the territory bigger than the basic state territory, e.g.:

- Cro/Denmark Agreement - “**territory**” means, in relation to the Kingdom of Denmark, its national territory with the exception of Greenland and the Faroe Islands, and in relation to the Republic of Croatia, its territory”

- Cro/UK Draft Agreement - “**territory**” means, in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, Jersey and Guernsey, and references to the "United Kingdom" or to "territory" in relation to the United Kingdom shall include the Isle of Man, Jersey and Guernsey,..."

Typical definitions - national

(c) “The term “**national**” of a Contracting Party/State means...” – it is important if the Agreement applies to nationals, to make difference to non-nationals and stateless persons, e.g.:

- Cro/Belgium Agreement – “the term “**national**” means – in relation to Croatia: a person who has the Croatian citizenship; in relation to Belgium: a person who has the Belgian citizenship”,
- Cro/Macedonia Agreement – “**national**” – in relation to Croatia, the Croatian national; in relation to Macedonia – the Macedonian national,
- ! in relation to states established in the ex-Yougoslavian territory, it is better to use the term citizenship than nationality! because of the multi-national population with usually one citizenship.

Typical definitions - legislation

(d) The term “**legislation**” means...” – the purpose of this definition is to differ between the legal provisions that each Contracting State applies in the field of social security (“legislation”) from those applied to all other legal fields (legal provisions, laws, regulations, internal legal requirements ...), e.g.:

- Cro/NZ Draft Agreement: “The administrative arrangements must: include provisions that ensure that the safeguards required under the **privacy laws** of both Contracting Parties are complied with...unless disclosure is required under the **legislation** of either Contracting Party..”

Typical definitions – competent authority

(e) The term “**competent authority**” means... – usually Minister or Ministry (Secretary or Department) competent for social security branches, e.g.:

- Cro/Denmark: “**competent authority**” means, in relation to the Kingdom of Denmark, the Ministry of Social Affairs, and in relation to the Republic of Croatia, the Ministry of Labour and Social Welfare and the Ministry of Health”,

- Cro/NZ Draft Agreement: “**competent authority**” means:
“for New Zealand, the chief executive of the department of State for the time being responsible for the administration of the Social Security Act 1964; and for Croatia, the Ministry for the time being responsible for the administration of the pension insurance scheme”.

Typical definitions - institution

(f) The term “**institution**” means...

(g) The term “**competent institution**” means...

- definition necessary if there is a difference between the “**institution**” and the “**competent institution**” in one or in both Contracting States

- also health care is sometimes provided by the **institution** in the place of stay or residence of one Contracting State, at the expence of the **competent institution** of the other Contracting State

Typical definitions - benefit

- (h) The terms “**benefit**” and “**pension**” means...
- all kinds of **cash benefits** provided out of public funds, together with increases, revaluations and supplements,
 - some Agreements have also the definition of the **benefit in kind**, e.g.:
 - “benefits in kind” means - medical care provided under the health insurance scheme, according to the applicable legislation”

Typical definitions – residence and stay

- The term “**residence**” means ordinary residence;
- The term “**stay**” means temporary residence;
 - these terms may be defined by the legislation of Contracting State/s but more often by other laws,
 - the definitions vary through countries – legal provisions on residence are not harmonised and there is possibility of having the simultaneous legal residence in more than one country (this may cause the overlapping of benefits if based on residence)

Typical definitions – insurance period

(k) The term “**period of insurance**” means...

- Periods of **contributions** – insurance periods
- Periods of **occupational activity** – employment or self-employment
- Periods of **residence** – some countries grant benefits based upon periods of residence (e.g., Australia, Denmark; Croatia for children allowances...)
- **Equivalent** periods – periods that are taken into account for entitlement to benefits that do not fit in the above categories (e.g., veteran periods completed in wars or in captivity, optional continued insurance, children raising periods, etc)

Typical definitions – frontier worker

(1) The term “**frontier worker**” means ...

- rarely defined in bilateral agreements and **more often in multilateral** instruments on social security (Regulations EEC 1408/71 and EC 883/04, European Convention on Social Security,...)
- the requirements for the “**frontier**” **quality** - the worker returns from the country of work to the country of residence every day or at least once a week - the specific category of workers who live and work in different countries at the same time, and
- **if not regulated** by the Agreement, they may be entitled to the same category of benefits in both countries at the same time, in one e.g., based on periods of employment or self-employment and in the other based e.g., on periods of residence (overlapping of benefits)

Typical definitions – refugees and stateless persons

(m) **Refugees** – the meaning according to Article 1 of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951, and in Article 1(2), of the Protocol on the Status of Refugees of 31 January 1967

(n) **Stateless persons** – the meaning according to Article 1 of the Convention on the Status of Stateless Persons, signed at New York on 28 September 1954;

- not necessary if the Agreement applies according to the universal principle (principle of coverage)

Typical definitions – family members, other terms

(o) The term “**members of the family**” means...

- usually - persons deemed as such under the legislation of each Contracting State

- negotiating Parties may also agree upon **other terms** depending on their needs, such as: worker, insured person, employee, self-employed person, periods of employment, periods of residence, benefits in kind, ship or vessel, etc.

Article 1 (2)

Other terms not defined – meaning assigned to them by the legislation of either Contracting State

Material Scope 1

Article 2 – most **European agreements** apply to the legislation governing all **social security contingencies**, except social assistance scheme:

- health insurance and medical care,
- occupational injuries and diseases,
- death grant,
- pensions – old-age, invalidity, survivors’,
- unemployment benefits,
- family benefits.

The agreements with **overseas countries** usually apply only to pension benefits or only to medical care schemes.

Material Scope 2

Schemes comprised by the Agreement:

- **Compulsory** – voluntary schemes are not included
- **General** - that apply to all occupationally active population or all residents or all employees, and
- **Special** (self-employed persons, civil servants, miners, farmers,..) if compulsory, and
- **Contributory and non-contributory** benefits
- **Future amendments** of existing schemes automatically covered, not applicable to new schemes
- Social assistance scheme is **not covered** by social security agreements, but some benefits of social assistance nature are covered (usually some non-contributory benefits)

Personal Scope

Article 3 – two alternatives:

- **Universal principle** – Agreement applies to persons who were subject to the legislation of a Contracting State regardless of nationality
- **Nationality principle** - Agreement applies to nationals, stateless persons and refugees
- Both principles comprise also the **persons who derive their rights** from persons mentioned above – family members and survivors regardless of nationality

Equal Treatment

Article 4 – one of the four **basic principles** of social security co-ordination:

- **nationals of one Contracting State** (also refugees and stateless persons, family members and survivors), +
- residence in the territory of the other Contracting State =
- same rights and obligations **as nationals of the Contracting State of residence**, but
- **!** under its legislation (→on social security),
- **regardless of** the chosen alternative of **personal scope** in the previous Article.

Exception: participation in social security administration or membership of social security tribunals may be **excluded** from equal treatment.

Export of Benefits

Article 5 - payment of benefits to the territory of the other Contracting State

- one of the four **basic principles** of social security co-ordination

- **RULE:**

- the eventual restrictions of national legislation related to payments abroad will not apply to persons residing in the other Contracting State

- **EXCEPTIONS:**

- unemployment benefits,

- special benefits granted as assistance or in case of need – e.g. non-contributory benefits: family benefits, social pensions, minimum pensions, etc.

- exceptions depend on the agreement of negotiating Parties

Prevention of Overlapping of Benefits

Article 6 – Assimilation of facts:

- **Prevention of combining** the social security benefits acquired in one Contracting State with other benefits or income or occupational activity in the other Contracting State, as if those benefits were paid or income received or occupational activity undertaken in the territory of the first Contracting State paying the social security benefits, under its criteria,
- **Exception** – pro-rata pensions payable in each Contracting State according to the Agreement, because acquired for only the respective part of the total working period completed in both Contracting States

Administrative Arrangement

- Provisions on **administrative procedures** for application of the Agreement

General provisions:

- Definition of the Agreement
- Lists of liaison bodies for each social security branch covered by the Agreement and of competent institutions
- Provision on preparation of forms by mutual consultations
- Provisions on duty of the other Contracting State to issue certificates
- The way of communication between institutions

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Thank you for your attention !