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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**

**Legislation Applicable
under a Bilateral Social Security Agreement
by Vanda Crnjac Paukovic**

Prishtina, 6 and 7 May 2010

Applicable Legislation

- **Determination of the legislation applicable:**
 - is one of the four **basic principles** of co-ordination,
 - a person can be subject only to **one legislation** in relation to one employment or self-employment,
 - provides for **avoiding of positive and negative conflict** of legislation,
 - **one competent state** and one competent institution,

General Rule

- **Lex loci laboris:**
 - Employees** covered by legislation of the country of work,
 - Self-employed** covered by legislation of the country where they perform their economic activity.
- **Civil servants**
 - covered by the legislation of the state in whose administration they are employed (sending State)

Exceptions 1

- **Posted workers:**

- **Employer sends** an employee to work in the other Contracting State,
- **For a limited period of time** – usually 12 or 24 months,
- Employee will continue to be covered by the **legislation of the sending State**,
- Applicable also to **self-employed** persons,
- BUT in case that the **period is exceeded** – lex loci laboris applies (the general rule).

Exceptions 2

- **Personnel of the international transport undertakings:**
 - **Rule:** legislation of the State in whose territory is the registered office – place of business of the employer,
 - **Exceptions:**
 - Person employed by branch or permanent representation covered by the legislation of the State in whose territory the branch or permanent representation is situated, but if
 - Employment and residence in the same country – legislation of that country applies, regardless of the registered office or branch or permanent representation situated in other country

Exceptions 3

- **Crew members on ship or vessel:**
 - Alternative 1:
 - Legislation of the State whose **flag** the ship or vessel is flying
 - Alternative 2:
 - **Employer and residence of a crew member in the same State** – covered by the legislation of that State

Exceptions 4

- **Diplomatic missions and consular posts**

- **Rule:**

- Covered by the legislation of the sending State,
- In conformity with Vienna Conventions on Diplomatic and Consular Relations

- **Exception** - locally employed persons:

- Rule: the legislation of the receiving State,
- But – nationals of the sending State may opt for that State's coverage
- Term of three months, right to opt only once

Diplomatic Missions and Consular Posts

- Model Agreement stipulates the whole text of the provision for coverage of the relevant staff, but
- In some other Agreements only the reference to Vienna Conventions is made:

- Example Cro/Denmark:

“This Agreement does not affect the provisions of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations with respect to the legislation specified in Article 2.”

It refers to:

- the Vienna Convention on Diplomatic Relations of April 18, 1961 (Article 33), and
- the Vienna Convention on Consular Relations of April 24, 1963 (Article 48).

Escape Clause

- **Common agreement of competent authorities on exceptions** to the general rule and to exceptions:
 - If in the interest of a person or category of persons
 - Who are already covered by the legislation of either Contracting State

Administrative Arrangement

- The institution of the Contracting State whose legislation is to apply (the sending State) issues a **certificate of a fixed duration**
- At the **request of the employer** or self-employed person
- **Competent institutions** are listed in the Arrangement, applicable also to other exceptions agreed between competent authorities of Contracting States

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Thank you for your attention !