



COUNCIL OF EUROPE
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Council of Europe

47 countries
HUMAN RIGHTS DEMOCRACY RULE OF LAW

60 YEARS
2009

Bilateral conventions on Social Security Co-ordination

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Therefore, in the absence of international protection, migrants...

- Face discrimination in social security**
- May encounter restrictive conditions in the host country for coverage by the national social security system**
- Run the risk of losing the entitlement to social security benefits which they enjoyed in their country of origin**
- Run the risk of losing the entitlement to social security benefits which they have accumulated during their stay in host countries when returning to their country of origin**

...and are particularly vulnerable in the face of “risks” or life contingencies

Policy options and instruments

1. Coordination of social security rights of migrant workers by:
 - *multilateral agreements*
 - *bilateral agreements*
2. Protection of social security rights by unilateral measures
3. Protection by individuals (e.g. private insurance)



Bilateral conventions

- Treaties between 2 States
- Creating rights and obligations
- Vienna Convention on the Law of Treaties 1969

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Basic principles in bilateral and multilateral instruments

1. Equality of Treatment Between Nationals and Non-Nationals

Non-national workers should have the same conditions as national residents in terms of coverage and entitlement to benefits.

2. Determination of Applicable Legislation

Social protection of migrant workers has to be governed by a single law to avoid double benefits or double obligation to pay social security contributions. Rules must be set for calculation and payment of benefits.

3. Maintenance of Acquired Rights and Provision of Benefits Abroad

The rights acquired in other countries should be guaranteed to the migrant workers; There should be no restriction on the payment of benefits irrespective of the place of residence of the beneficiary (export of benefits).

4. Maintenance of Rights in Course of Acquisition

The contribution period served in other country should be taken into account when considering the qualifying period (principle of aggregation).

5. Reciprocity and mutual administrative assistance

Facilitation of administrative arrangements through liaison bodies to ensure a smooth coordination.



Bilateral conventions?

- Bilateral convention takes into account the specificity of migration between 2 states
- Basic principle : reciprocity

Negotiation a bilateral convention



Definition

- Material scope
- Personal scope
- Territorial scope



Material scope

- either by listing the relevant legislation (Alternative 1) or
 - the different benefits (Alternative 2)
267.
 - Although most bilateral instruments cover most or all branches of social security, some states may restrict the application of their agreements to long term benefits (invalidity, old age and survivor's benefits)

Personal scope



Defining

- General personal scope and covers all persons who have been subject to the social security legislation in one or both of the contracting parties (regardless of their nationality)?
- Limited personal scope and covers only nationals of the contracting parties as well as refugees and stateless persons
- Family members

Export of Benefits

- The model provisions make the export of benefits a general rule. They clearly state that no benefit shall be restricted solely on the basis that the recipient resides in the territory of the other contracting party

The Prevention of the Overlapping of Benefits

- Every national social security system will have some rules or regulations to prevent social benefits being combined with other benefits or with income or occupational activity.
- One of principal goals of these rules is to prevent double recovery, in other words preventing someone from being compensated twice for the same social risk.

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Determining the Applicable Legislation

- basic rules are based on the principle of lex loci laboris:
 - i) employees are covered by the legislation of the contracting party in which they work, even if they reside in the other contracting party
 - ii) self employed persons are covered by the legislation of the contracting party in which they perform their economic activity, and

Determining the Applicable Legislation

- iii) civil servants are covered by the legislation of the contracting party within whose administration they are, employed.
- These are only the basic rules,
 - the model provisions provide for a number of exceptions and special cases.
 - One such special case is posting

Special Provisions Concerning the Various Categories of Benefits

- **Sickness and Maternity Benefits**
- **Invalidity, Old Age and Survivor's Benefits**
- **Death Grants**
- **Occupational Injuries and Disease Benefits**
- **Unemployment Benefit**
- **Family Allowances**

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Miscellaneous Provisions

- The parties are encouraged to establish liaison offices in each state and treat all requests for information and assistance from the other contracting with due diligence and free of charge.
- The communication needed for the application of the model provisions should take place in each person's official language

Transitional and Final Provisions

- The transitional measures envisaged within the model provisions give the contracting parties the choice of two alternatives.
- These alternatives deal with how periods of insurance acquired before the agreement entered into force should be treated
- as well as the back-dating and reassessment of benefits which is provided only in the second alternative

- Thank you for your attention

- Questions ?

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