

Coordination of Social Security – Training Modules –

ILO Decent Work Technical Support Team and
Country Office for Central and Eastern Europe

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Foreword

The Republic of Moldova is one of the major source countries of migrant workers in Europe. It is estimated that between 600 thousand and 1 million Moldovans are migrant workers working all over Europe and beyond. Moldova's dependence on remittances is the second highest in the world.

In these circumstances, ensuring the equality of treatment in social security for migrant workers is of critical importance. To protect the rights of Moldovan migrant workers, the authorities of the Republic of Moldova have taken steps to conclude bilateral agreements on social security with the main destination states of Moldovan citizens working abroad. Moldova signed the first social security agreement with Bulgaria in 2008 and the second one with Portugal in 2009. In 2010, Moldova signed social security agreements with Romania and Luxembourg, and negotiations are underway with Poland, Austria and Belgium.

In order to support this process, an Experts' Training on Social Security Agreements was conducted from 2 to 5 March 2010 in Chisinau as part of the Romanian-funded technical cooperation project "Republic of Moldova: Building capacity for coordination of social security for migrant workers".

This publication comprises the presentations delivered at the Experts' Training. The scope of this publication covers international standards on social security coordination and practical aspects of social security agreements. It supplements the general guides and instruments for social security coordination. We hope that this publication will be a valuable reference source for those concerned with the coordination of social security systems.

We would like to express our appreciation and especially acknowledge the following resource persons for their valuable contribution to the training:

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Budapest, August 2010

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International Standards on Social Security Coordination

Module 1: General background

Module 2: International standards on social security coordination (I)

Module 3: International standards on social security coordination (II)

Module 4: Instruments of social security coordination in Europe

Outline of Module 1

1. Definition of Social Security and Restrictions for Migrant Workers
2. Social Security as Basic Human Right
3. ILO Mandate in Social Security

Definition of Social Security

Social security means: *The protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity old-age and death; the provision of medical care; and the provision of subsidies for families with children.*

Note: see the nine branches of social security in ILO Convention No. 102

Restrictions of social security rights for migrant workers caused by the lack of international coordination instruments:

Social security is mainly based on national legislation.

Limitations through:

- The principle of territoriality (coverage and benefits)
- Residence requirements (benefits)
- Benefit conditions of a minimum number of contributions (lacking totalisation)
- No payment of benefits abroad (=lacking portability)
- Lacking social security coordination between two or more national social security schemes.

Special problem: migrants working in the informal economy.

Social Security as a Basic Human Right proclaimed in several legal instruments of the UN

Universal Declaration of Human Rights (1948):

Art. 22: *“Everyone as a member of society has the right to social security...”*

Art. 25 para.1: *“Everyone has the right to ...security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control.”*

Art. 25 para.2: *“Motherhood and childhood are entitled to special care and assistance.”*

Social Security as a Basic Human Right enshrined in several legal instruments of the UN

International Covenant on Economic, Social and Cultural Rights (1966):

Art. 9 *“The State Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”*

Interpretation of the normative content by General Comment No. 19 of the Committee on Economic, Social and Cultural Rights, adopted Nov. 2007.

International Covenant on Economic, Social and Cultural Rights

The **Committee on Economic, Social and Cultural Rights** notes in the Observation No. 19 that:

“the right of everyone to social security imposes upon the States parties that they should consider the development of further legal instruments. The Committee notes the importance of establishing reciprocal bilateral and multilateral international agreements or other instruments for coordinating or harmonizing contributory social security schemes for migrant workers. Persons temporarily working in another country should be covered by the social security scheme of their home country.”

ILO Mandate in the field of Social Security

Preamble to the ILO Constitution (1919):

“...to improve conditions of labour, for example, by the prevention of unemployment, ...the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of children, young persons and women, provision for old-age and injury, protection ...of workers when employed in countries other than their own.”

Declaration of Philadelphia (1944):

“...to further...the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;”

International Standards on Social Security Coordination

Module 1: General background

Module 2: International standards on social security coordination (I)

Module 3: International standards on social security coordination (II)

Module 4: Instruments of social security coordination in Europe

Outline of Module 2

1. Principles of Coordination of Social Security Schemes
2. The ILO Conventions on Coordination (I)
 - Equality of Treatment (Accident Compensation) Convention, 1925, No. 19
 - Maintenance of Migrants' Pension Rights Convention, 1935, No. 48 (no longer open for ratification)
 - Social Security (Minimum Standards) Convention, 1952, No. 102
 - Equality of Treatment (Social Security) Convention, 1962, No. 118

Five Principles in ILO Conventions concerning the coordination of national social security schemes

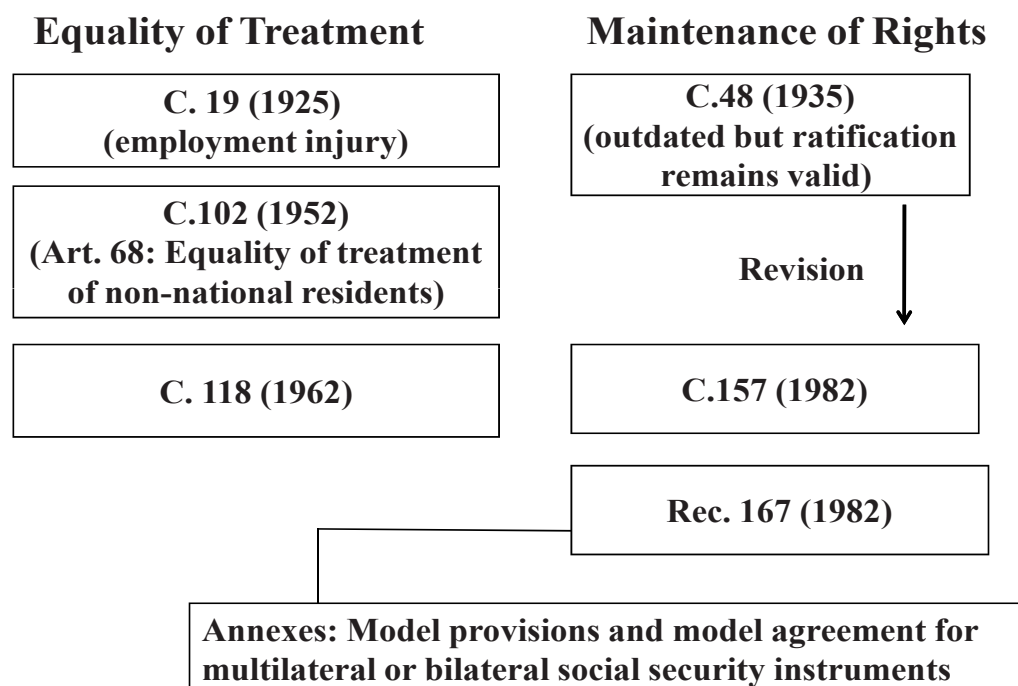
1. **Equality of treatment** between migrant workers and permanent residents;
2. **Determination of the applicable legislation** to ensure that only one national scheme applies;
3. **Maintenance of acquired rights and provision of benefits abroad:** The rights of migrant workers have to be guaranteed **regardless of the territory** in which it was acquired and the territory of his residence in one of the contracting States. The provision of benefits abroad ensures their **portability**. Therefore, no restrictions on the payment of benefits are admitted, in any of the countries concerned.

Five Principles in ILO Conventions concerning the coordination of national social security schemes (continued)

4. **Maintenance of rights in course of acquisition:** Where a right is conditional upon the completion of a qualifying period, account has to be taken of periods served by the migrant worker in each country
= **Totalisation of employment/contribution periods served in several countries.**
5. **Reciprocity:** Equal treatment has to be granted only to nationals from countries, which - by ratifying the respective Convention - have the same legal obligation concerning migrant workers. The scale of reciprocity varies from Convention to Convention.

Note: Coordination is limited to eliminate restrictions of rights for migrant workers respecting the independence of national schemes. It does **not** require **harmonisation** of the different national schemes.

ILO legal instruments for social security coordination



Equality of Treatment (Accident Compensation) Convention, 1925, No. 19

- Stipulates **equality of treatment**: the nationals of any other State having ratified with the own nationals in cases of **industrial accidents** happening in its territory.
- Therefore, **no condition of residence** is permitted.
- No obligation to pay the **benefit abroad**. But if benefits for the own nationals are paid abroad also benefits for nationals of other States having ratified must be paid abroad.
- The Conv. is **directly applicable**, i.e. no further agreement between ratifying States necessary. **However**, modalities of payments of benefits abroad require often bilateral agreements.
- Ratification generates obligation to establish a system of workmen's compensation within 3 years since ratification date.
- Duty of the ratifying State to afford each other mutual assistance to facilitate the application of the Conv.

Maintenance of Migrants' Pension Rights Convention, 1935, No. 48 (no longer open for ratification)

- **Outdated** since revision through Conv. No. 157, existing ratifications still valid;
- Application limited to the branches invalidity, old-age and survivors' pensions.
- Concerns the maintenance of rights in course of acquisition and the maintenance of acquired rights.

Social Security (Minimum Standards) Convention, 1952, No. 102

The nine classical branches of social security of this Convention are the basis of the later adopted Conventions:

1. **Medical care**
2. **Sickness benefit**
3. **Unemployment benefit**
4. **Old-age benefit**
5. **Employment injury benefit**
6. **Family benefit**
7. **Maternity benefit**
8. **Invalidity benefit**
9. **Survivors' benefit.**

Ratification requires only acceptance of three branches
(including one long term benefit or unemployment benefit).

ILO Conv. No. 102 and the equality of treatment

Art. 68: stipulates the equal treatment of **non-national residents** with **national residents** of the ratifying State.

Exceptions are permitted concerning the treatment of non-nationals and nationals born outside of the territory of the member State.

These concern the following cases:

- The benefits are payable out of **public funds**,
- Benefits in respect of **transitional schemes**.

Under **contributory social security schemes** covering employees, the equality of treatment can be subordinated to the existence of a bilateral or multilateral agreement providing for **reciprocity**.

Equality of Treatment (Social Security) Convention, 1962, No. 118 –(I)

- Ratification requires the **existence of a legislation** in the branch of SS being chosen for ratification. The choice of the SS branches is related to the nine branches according to Conv. No. 102.
- However, it is **not necessary** to extend the ratification to **all existing SS schemes**. The ratifying State must specify the branch(es) in respect of which it accepts the obligations of the Conv.
- Ratification does **not require** a social **insurance** type scheme providing **periodical benefits**; it can also be a **state-run system**, a **provident fund** or a scheme based on **direct employer's liability**.
- Unlike Conv. No. 102, Conv. No. 118 does **not** specify a **minimum level** of the benefits.

Equality of Treatment (Social Security) Convention, 1962, No. 118 – (II)

- The principle of **equal treatment** between the own nationals and the **nationals of any other State** for which the **Conv. is in force** is **directly applicable**. The principle is extended to refugees and stateless persons.
- Applicable is the principle of a **global reciprocity = Equality of treatment** has to be granted for the national of another contracting State even if the other State has no legislation at all concerning such kind of benefit. The equality concerns both: the coverage and the benefits.
- In the case of survivors' benefits, the equality of treatment has to be granted to the **survivors** of the national of a contracting State, **irrespective of the nationality of the survivors**.
- **Retaliation** is permissible against nationals of a contracting State having such legislation but is not granting equality of treatment.

Equality of Treatment (Social Security) Convention, 1962, No. 118 – (III)

- Equality of treatment as regards the grant of benefits shall be granted **without any condition of residence** on the territory when residing abroad (Art. 4 para. 1).

Conclusion: If SS benefits are provided to the nationals of the State concerned when they are residing abroad, they have to be provided likewise to the nationals of any other State being bound by ratification.

- In seldom cases exceptions are admitted with the consequence that residence requirements with an upper limit are admitted:
 - a) the benefits are not financed by the persons protected or by their employer.
 - b) the benefits are those of transitional schemes.
 - c) only the kind of cash benefits mentioned in Art. 4.

Equality of Treatment (Social Security) Convention, 1962, No. 118 –(IV)

Maintenance of acquired rights for beneficiaries residing abroad (Art. 5, directly applicable):

Each State having accepted the obligations in respect of one or more branches of the following long-term benefits:

- invalidity benefits,
- old-age benefits,
- survivors' benefits,
- employment injury benefits

has to guarantee provision of these benefits for persons residing abroad. This obligation is valid both to its own nationals and to nationals of other ratifying States, which have accepted the obligations of the Conv. in respect of the respective branch(es). The obligation remains if the person is residing in a country, which has not ratified the Conv.

Equality of Treatment (Social Security) Convention, 1962, No. 118 – (V)

Not in line with the principle of maintenance of rights are especially the following restrictions:

- Total or partial suspension of payments when the beneficiary is residing abroad;
- Conversion of the pension into capital;
- Condition that a bilateral agreement has been concluded;
- The need of a prior authorisation;
- Exchange control regulations;
- Condition of the appointment of a representative in the country, which provides the benefit.

Equality of Treatment (Social Security) Convention, 1962, No. 118 – (VI)

Special regulation in **Art. 6** regarding **family allowances**:

Every State having accepted the obligations in respect of family benefits shall guarantee the grant of **family allowances both to its own nationals and to the nationals of other States** having also accepted the obligations in respect to family benefits in view of children who reside on the territory of any such member State. The conditions and limits of payments have to be agreed upon by the respective States (= **indirect obligation**).

Notes:

1. The term family benefit is broader than “family allowances”.
2. Family allowance = periodical payment as compensation for expenditure for the maintenance of children (exclusive of special allowances).
3. Art. 6 covers both contributory and non-contributory benefits.

Equality of Treatment (Social Security) Convention, 1962, No. 118 – (VII)

Maintenance of acquired rights and rights in course of acquisition = portability of rights (Art. 7, indirectly applicable):

Ratifying States shall endeavour to **conclude bilateral/multilateral social security agreements** in order to ensure the maintenance of rights in those branches of social security for which the obligations were accepted. These agreements concern the totalisation of periods of insurance, employment or residence and of assimilated periods for the purpose of the acquisition, maintenance or recovery of rights and for the calculation of benefits. These agreements shall contain rules about the repartition of the costs of long-term benefits among the States concerned (= invalidity, old-age and survivors' benefits).

The ratifying States shall afford each other **administrative assistance free of charge** (Art. 11).

RATIFICATION OF ILO CONVENTIONS 118 and 157 BY BRANCH

(As of 1 July 2010)

COUNTRY	Date of ratification of C.118	Date of de-nouncement	BRANCH									Date of ratification of C.157	
			Medical care	Sickness benefit	Maternity benefit	Invalidity benefit	Old age benefit	Survivors' benefit	Employment injury benefit	Unemployment benefit	Family benefit		
Bangladesh	22/06/1972				√					√			
Barbados	14/10/1974			√	√			√	√	√			
Plurinational State of Bolivia	31/01/1977		√	√	√							√	
Brazil	24/03/1969		√	√	√	√	√	√	√	√			
Cape Verde	08/07/1987		√	√	√	√	√	√	√	√		√	
Central African Republic	08/10/1964				√		√		√			√	
Democratic Republic of the Congo	01/11/1967					√	√		√				
Denmark	17/06/1969		√	√					√	√			
Ecuador	09/03/1970		√	√	√	√			√	√			
Egypt	12/01/1993		√	√	√	√	√	√	√	√	√		
Finland	15/08/1969		√	√					√				
France	13/05/1974		√	√	√	√			√	√		√	
Germany	19/03/1971		√	√	√				√	√			
Guatemala	04/11/1963				√								
Guinea	11/08/1967		√	√	√		√	√	√			√	
India	19/08/1964		√	√	√								
Iraq	28/04/1978		√	√	√	√	√	√	√				
Ireland	26/11/1964		√	√					√	√	√		
Israel	09/06/1965				√		√	√	√			√	
Italy	05/05/1967		√	√	√	√	√	√	√	√	√	√	
Jordan	07/03/1963				√	√		√	√				
Kenya	09/02/1971					√	√	√					
Kyrgyzstan													10/09/2008
Libyan Arab Jamahariya	19/06/1975		√	√	√	√	√	√	√	√	√	√	
Madagascar	22/06/1964			√	√	√			√				
Mauritania	15/07/1968					√	√	√	√			√	
Mexico	06/01/1978		√	√	√	√	√	√	√				
Netherlands	03/07/1964	20/12/2004	(√)	(√)	(√)	(√)	(√)	(√)	(√)	(√)	(√)	(√)	
Norway	28/08/1963							√				√	
Pakistan	27/03/1969				√				√				
Philippines	26/04/1994		√	√	√	√	√	√	√				26/04/1994
Rwanda	21/09/1989					√	√	√	√				
Spain													11/09/1985
Suriname	15/06/1976								√				
Sweden	25/04/1963		√	√	√				√	√			18/04/1984
Syrian Arab Republic	18/11/1963					√	√	√	√				
Tunisia	20/09/1965		√	√	√	√	√	√	√			√	
Turkey	25/06/1974		√	√	√	√	√	√	√				
Uruguay	22/02/1983		√	√	√				√	√	√		
Bolivarian Republic of Venezuela	05/11/1982		√	√	√	√	√	√	√				
Number of current ratifications	37	-	22	24	27	20	20	22	32	8	13		4

Source: ILOLEX (<http://www.ilo.org/ilolex/>)

C.118: Equality of Treatment (Social Security) Convention, 1962 (No.118)

C.157: Maintenance of Social Security Rights Convention, 1982 (No.157)

International Standards on Social Security Coordination

Module 1: General background

Module 2: International standards on social security coordination (I)

Module 3: International standards on social security coordination (II)

Module 4: Instruments of social security coordination in Europe

Outline of Module 3

1. The ILO Conventions on Coordination (II)

- Maintenance of Social Security Rights Convention, 1982, No. 157
- Maintenance of Social Security Rights Recommendation, 1983, No. 167

2. Ratification in Practice

Maintenance of Social Security Rights Convention, 1982, No. 157 – (I)

- **Conv. No. 157 complements Conv. No. 118** regarding maintenance of rights and deals **with the applicable legislation**.
- **Conv. 157** is a **revision of Conv. No. 48** and **extends** the application to **all nine social security branches** being enumerated in Conv. 102 and 118.
- The ratification has to cover **all social security branches in force** by ratifying State and does **not allow acceptance branch by branch**.
- The following principles are **directly applicable**:
 1. **Maintenance of acquired rights** concerning following long-term benefits: invalidity, old-age, survivors' benefits, employment injury benefits and death grants (Art. 9 para. 1 and 4). These benefits have to be provided to the own nationals, the nationals of other ratifying states, refugees and stateless persons, irrespective of their residence abroad and irrespective of the existence of such benefits in the other State (**global reciprocity**).

Maintenance of Social Security Rights Convention, 1982, No. 157 – (II)

2. **Readjustment** of benefits payable abroad (Art. 11).
3. **Administrative assistance** between authorities and institutions free of charge (Art. 12 para 1 and 2).
4. **Claims** and documents may not be rejected by reason of the fact that they are written in a **foreign language** (Art. 12 para 3).
5. Commitment to promote the **development of social services** to assist migrant workers (Art. 14).
6. Commitment to **coordinate different bilateral / multilateral agreements**.

Maintenance of Social Security Rights Convention, 1982, No. 157 – (III)

- **Indirect application:**

In order to apply parts II to VI of the Conv. the countries concerned being bound by the Conv. No. 157 shall conclude bilateral or multilateral agreements with other countries having ratified it.

- **Determination of the applicable legislation** (Part II, Art. 5): requires an agreement between the countries concerned; the objective is to avoid conflicts in laws and their undesirable consequences (coverage under several social security legislation or no coverage at all).

Examples: Employees are covered in the country of employment; Self-employed are covered where they normally engage in their occupation; Seafarers are covered in the flag state; not economically active persons are covered in the country of residence.

Note: States concerned may stipulate exceptions from these rules by agreement.

Maintenance of Social Security Rights Convention, 1982, No. 157 – (IV)

Maintenance of rights in course of acquisition (Part III, Art. 6-8)

Each ratifying State has to guarantee the maintenance of rights in course of acquisition. This is an indirect obligation because this principle has to be included in bi- or multilateral agreements. For the sake of flexibility the indirectly applicable provisions may be implemented only progressively. The bi- or multilateral agreements have to cover at least employees and certain benefits including invalidity, old-age, survivors' benefits, employment injury pensions and death grants.

Examples of maintenance (= principle of aggregation): adding together periods of insurance, employment, occupational activity or residence.

Maintenance of Social Security Rights Recommendation, 1983, No. 167 (I)

A) Selected elements of the main part of the Recommendation:

- States bound by any bilateral or multilateral social security instrument should endeavour by **mutual agreement to extend benefits** with reference to the **applicable legislation** and the **maintenance of rights** to the following groups of persons:
 1. nationals of other ratifying States,
 2. refugees resident in the territory of any State,
 3. and stateless persons resident in the territory of any State (§ 2 of the Rec.).
- States being concerned by migration should conclude among themselves **administrative or financial arrangements** to remove the following obstacles concerning the following benefits: invalidity, old-age, survivors' benefits, employment injury pensions and death grants (§ 3 of the Rec.).

Maintenance of Social Security Rights Recommendation, 1983, No. 167 (II)

- States bound by a bilateral or multilateral agreement having **no unemployment benefit** or **family benefit scheme** in force, shall endeavour to conclude arrangements to **compensate** equitably the **loss of rights** as result of changes of the residence from one country to the other country (§ 4 of the Rec.).
- Implementing the Conv. No. 118, 157 or any other international agreement **cash benefits** have to be paid to beneficiaries residing abroad **directly or indirectly** via an institution acting as intermediary (§ 5 of the Rec.).
- States shall endeavour to **conclude** bilateral or multilateral **social security agreements** covering **all nine branches of social security** and to develop the coordination of these agreements (§ 6 of the Rec.).

Maintenance of Social Security Rights Recommendation, 1983, No. 167 (III)

- B) **Annex I: Model provisions for the conclusion of bilateral or multilateral social security instruments**
- I. Definitions
 - II. Applicable legislation, e.g. length of employment abroad; persons employed in international transport; activities of self-employed persons in several States.
 - III. Maintenance of rights in course of acquisition, e.g. method of apportionment (is often used); method of integration (is seldom used). Specific solutions for each contingency.
 - IV. Maintenance of acquired rights and provision of benefits abroad, specific solutions with different alternatives for each contingency. These alternatives concern inter alia non-contributory invalidity, old-age and survivors' benefits and family benefits.
 - V. Regulation of undue plurality with other benefits or other income, i.e. to avoid the granting of several benefits of the same nature and to avoid that the reduction, suspension or suppression causes undue disadvantages.
 - VI. Miscellaneous (administrative) provisions.

Maintenance of Social Security Rights Recommendation, 1983, No. 167 (IV)

C) Annex II: Model agreement for the co-ordination of bilateral or multilateral social security instruments

Example: A worker has the nationality of country A. Having worked in country A for 1 year he continues his work in country B for further 2 years. In the third country C, the worker practices his job for 3 years. Then he becomes invalid and has to stop working completely. There exist two bilateral agreements:

- Agreement between country A and country B;
- Agreement between country A and country C.

According to an agreement on the coordination of both bilateral instruments the contribution periods are totalised in view of the calculation of the invalidity and old-age pension.

Ratifications of ILO Conventions on coordination of social security schemes (as of 1 July 2010)

No. of ratifications	Conv. No. 19	Conv. No. 102	Conv. No. 118	Conv. No. 157
In Europe	33	31	10	2
In other regions	88	15	27	2
Total No.	121	46	37	4

Ratification in Practice - Preparation of Ratification

The Government should ensure the necessary personal and administrative capacity for the ratification process and for the permanent implementation of the Convention after ratification.

- It is useful to create an interministerial working group. Each ministry has to involve their subordinated institutions, as far as they can contribute.
- In a Federation the national state has to involve the federal States.
- Early involvement of national Trade Unions and Employers' Organisations is essential.
- The national legislation and administrative practice has to be analysed if it is in conformity with the obligations being connected with the ratification. In this context it is useful to examine the “travaux préparatoires” and the conclusions of the Committee of Experts.

Ratification in Practice - Preparation of Ratification

- If a government is prepared to ratify a Convention it is useful to prepare a “zero-report” and to submit it to the ILO. The Office will then examine if the Member State is complying with the obligations of the Convention.
- Ratifications cannot be accompanied by reservations. On the other hand, some Conventions provide for certain exclusions, exceptions or options. In such cases the Government has to combine the ratification act with a declaration expressing those specifications.
- After ratification the Government has to submit regularly reports on the application of the ratified Convention in order to prove that the obligations resulting from ratification are fulfilled.
- In this regard before ratification it is useful for the Government to examine if the requested information is available.

Ratification in Practice - Reporting System

Detailed reports are requested

- a) The first report the year following the entry into force of a Convention.
- b) If there have been significant changes in the application of a ratified Convention.
- c) If the Committee of Experts or the Conference Committee has it requested.

Subsequent reports are simplified. To be delivered every five years.

Ratification in Practice - Reporting System

Contents of simplified reports:

- a) Replies to the **comments of the supervisory bodies**.
- b) **Changes of laws, regulations, etc.** (only minor changes; if big changes a detailed report should be delivered).
- c) Implementation of the Convention: **statistical or other information** and communications in conformity with the **report form**.
- d) Indication of the **employers' and workers' organizations** to which copies of the reports have been sent.
- e) **Observations** of employers' and workers' organizations.

Ratification in Practice – Regular supervisory process



International Standards on Social Security Coordination

Module 1: General background

Module 2: International standards on social security coordination (I)

Module 3: International standards on social security coordination (II)

Module 4: Instruments of social security coordination in Europe

Outline of Module 4

1. Coordination of national social security schemes in the European Union
2. Council of Europe instruments on coordination:
 - Multilateral Agreements concerning the Coordination of Social Security Scheme Council of Europe
 - Model Provisions for a Bilateral Social Security Agreement and Explanatory Report
3. Resources for further information

Coordination of national social security schemes in the European Union

- In force until 30 April 2010:
 - **Council Regulation (EEC) No. 1408/71 of 14 June 1971 and**
 - **Council Regulation (EEC) No. 574/72 of 21 March 1972.**

Coordination does not require harmonisation. The first coordination in the European Economic Community dates from 1958. (Regulation No. 3/1958). It was replaced by regulation 1408/71. Through several amendments the personal and material field of application was enlarged (e.g. extension to self-employed, civil servants and students; improvements for family).

- Entry into force 1 May 2010:
 - **Regulation (EC) No. 883/2004 of the European Parliament and the Council of 29 April 2004.**
 - **Regulation (EC) No. 987/2009 of the European Parliament and the Council of 16 September 2009**

The first regulation contains the principles of coordination and the second regulation lays down the procedure for implementation.

Coordination of national social security schemes in the European Union

What will change in May 2010?

1. Enhancement of the insured's rights by extending the personal and material scope;
2. Extension of the scope to all Member State nationals covered by the social security legislation of a Member State and not only the active population;
3. Extension of the social security branches subject to coordination (especially preretirement allowances);
4. Longer period of maintenance of the right of unemployment benefit for persons who move to another Member State to seek work (up to 6 months); Reinforcement of the equal treatment principle, especially for frontier workers;
5. Reinforcement of the right to export social security benefits;
6. New principle of good administration.

Coordination of national social security schemes in the European Union

Exemptions: In the following cases the Regulation No. 1408/71 will still remain in force:

1. Application of the Council Regulation No. 859/2003 of 14 May 2003 concerning nationals of third countries who are not already covered by those provisions solely on the ground of their nationality;
2. Application of the Agreement on the European Economic Area, the Agreement between the EC and the Swiss Confederation on the free movement of persons and other Agreements containing reference to Regulation (EEC) No. 1408/71;
3. Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

1. **European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors of 11 December 1953** (European Treaty Series –ETS– No. 12; in force since 1/07/1954; 21 ratifications);
 - It is applicable to **long-term benefits**.
 - Ensures equal treatment for all nationals of other contracting parties.
 - It provides further that any bilateral or multilateral agreement concluded between two or more contracting parties should be extended to the nationals of the other contracting parties.
 - Death grants and employment injury benefits are not included. Non-contributory benefits are included, although public assistance is excluded.
 - The **Protocol to the European Interim Agreement** (same date) extends the application to refugees.
-

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

2. **European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors of 11 December 1953** (ETS No. 13; in force since 1/07/1954; 21 ratifications);
 - It is applicable to **short-term benefits**: sickness, maternity benefits, death grants, including medical benefits (if not needs tested), employment injury (including short-term and long-term incapacity), unemployment benefits and family allowances.
 - In substance **same content as Agreement No. 1** (i.e. equality of treatment; non-contributory benefits included but public assistance excluded).
 - The **Protocol to this European Interim Agreement** (same date) extends the application to refugees.

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

- 3. European Convention on Social Security of 14 December 1972** (European Treaty Series No. 78, in force since 1/03/1977; 8 ratifications); signed by Moldova in 2002 but not ratified yet.
- This comprehensive Convention concerns also the coordination of national social security schemes and goes beyond the Interim Agreements: It covers **all nine social security branches**, being enshrined in ILO Conv. No. 102 and **all the principles of the coordination** of national social security schemes are taken into account. In the elaboration of this Convention the former regulations of the European Economic Community No.3/57 was taken into account.

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

- Concerning the **personal scope** the Convention was even broader than the former EEC regulation No.3/57 (covering nationals who are workers, self-employed persons and others having been subject to the legislation of one or more of the contracting States).
- Included are **benefits based on need and a lack of sufficient resources**, while **social assistance** and **medical assistance** schemes are **excluded**.
- The Convention contains both **directly applicable obligations** and **indirectly applicable obligations**. The indirect applicable regulations may be used as models for bilateral agreements.

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

- 4. Supplementary Agreement for the Application of the European Convention on Social Security of 14 December 1972** (ETS No.78A, in force since 1/3/1977; 8 ratifications); signed by Moldova in 2002.
- The Convention and the Supplementary Agreement constitute an inseparable unit.
 - Subject of this Agreement is the practical implementation of the Agreement, eg. Procedures to establish a **permanent close cooperation** between the competent authorities and the competent institutions (liaison bodies) of the contracting States in order to communicate directly with each other.

Council of Europe: Multilateral Agreements concerning the Coordination of Social Security Schemes

Supplementary Agreement for the Application of the European Convention on Social Security of 14 December 1972 (continued)

- Preparation of models of certificates, statements, declarations and other **forms and documents** by the Committee of Experts of the Council of Europe. Their **standardisation** for all contracting states guarantees an equal treatment of migrant workers from countries of origin and simplifies administrative procedures.
- It contains regulations on e.g.
 - the determination of the competent institution for the submission of benefit claims,
 - procedures to be followed for application of benefits
 - settling and paying benefits that are due in conformity with the Convention, administrative and medical supervision

These regulations are differentiated according to the specific needs in the various contingencies.

Council of Europe: Model Provisions for a Bilateral Social Security Agreement and Explanatory Report

The Model Provisions and its Explanatory Report were elaborated and recognized by the Committee of Ministers in 1998. They ensure flexibility through several **alternative solutions** and are based on **all main coordination principles**.

Contents:

Part 1: General Provisions: definitions, material and personal scope, equal treatment, export of benefits, no overlapping benefits.

Part 2: Determining the Applicable Legislation.

Part 3: Special Provisions concerning the various Categories of Benefits.

Part 4: Miscellaneous Provisions: use of official languages, exemption from charges, acceptance of court decision in the contracting State, currency of payment, settlement of disputes.

Part 5: Transitional and Final Provisions.

Council of Europe: Multilateral Agreement on the Coordination of National Social and Medical Assistance Schemes

European Convention on Social and Medical Assistance of 11.12.1953 (ETS No. 14, in force since 1/7/1954, 18 ratifications).

- Subject is **social and medical assistance**. It is **complementary** to the social security coordination because public assistance is exempted from the application of the Conventions on the coordination of social security schemes.
- **Assistance** = means of subsistence and the care necessitated for persons without sufficient resources. The assistance must be provided as long as the need persists. Assistance does **not** cover **non-contributory pensions**.
- Principle of **equal treatment** between the own nationals and nationals of other contracting States in view of the **entitlement of social assistance**. No requirement of the country of origin to refund the cost of assistance.

Council of Europe: Multilateral Agreement on the Coordination of National Social and Medical Assistance Schemes (continued)

- Principle that the **need for assistance is not** a valid ground for **repatriation**. This applies to **lawfully resident** nationals of another contracting State provided that the **duration of the legal residence** is at least 5 years for persons having entered before attaining the age of 55 years (or 10 years of residence if the person entered the country after the age of 5 years).
- Periods of received assistance from public funds are excluded from the calculation of the period of residence.
- Contracting States undertake to receive any of its nationals who are repatriated, and other contracting States must not hinder transit of repatriated persons across their territory.
- The administrative, consular and diplomatic authorities of the contracting States have to **cooperate in the implementation** of the Convention.
- The **Protocol** extends the scope of application to **refugees**.

Resources for further information

http://www.ilo.org	=	STANDARDS (in the left row)
http://www.coe.int	=	Treaty Office (in the left row)
http://eur-lex.europa.eu/index.htm	=	Access to European Union Law

ILO, International Labour Standards Department, *Handbook of procedures relating to international labour Conventions and Recommendations*, revised, 2006, Geneva.

ILO, Social Security Department, *Social Security for Migrant Workers*, Interdepartmental Project on Migrant Workers 1994-95, 1996, Geneva.

ILO, *Rules of the Game*, A brief introduction to International Labour Standards, 2005, Geneva.

ILO, *Introduction to Social Security*, 3rd edition 1984, Geneva.

Council of Europe, *Collection of Treaties – Migration*, Summaries and texts of treaties, 2002, Strasbourg.

Council of Europe, *Coordination of Social Security in the Council of Europe: Short guide*, by Jason Nickles and Helmut Siedl, 2004, Strasbourg.

Social Security Agreements

Module 1: Introduction to the coordination of social security systems

Module 2: Material and personal scope, equality of treatment, export of benefits

Module 3: The legislation applicable (coverage)

Module 4: Preservation of rights in course of acquisition (totalising)

Module 5: Coordination of medical care (benefits in kind)

Module 6: Administrative provisions

Module 7: Process for negotiating and concluding an agreement

Outline of Module 1

- Objectives of coordination
 - Coordination / harmonisation
 - Mechanisms for coordination:
 - ILO Conventions
 - Multilateral social security agreements
 - Bilateral social security agreements
 - Reciprocity
-

Objectives of coordination

- Ensure that migrant workers and their families can exercise rights to benefits from the social security systems of countries in which they have worked / lived
- Establish administrative links between social security systems to assist migrant workers and their families to receive benefits

Coordination / harmonisation

- Coordination:
 - Establishing mechanisms through which social security systems can work together to achieve mutually agreed objectives *while ...*
 - Maintaining and respecting the separate rules and definitions of each system
-

Coordination / harmonisation

- Harmonisation:
 - Establishing mechanisms through which social security systems can work together to achieve mutually agreed objectives *by ...*
 - Replacing the different definitions and rules of each system with common definitions and rules

Coordination / harmonisation

- Harmonisation
 - Theoretically possible, *but* ...
 - Practical / political challenges would be enormous
 - Coordination
 - Tried and tested approach widely used by countries around the world
-

Mechanisms for coordination

- ILO Conventions
 - No 102 – Minimum standards, 1952
 - No 118 – Equality of treatment, 1962
 - No 157 – Maintenance of rights, 1982
 - Recommendation No. 167, 1983
- Social security agreements
 - Bilateral
 - Multilateral

ILO Conventions

- Establish international standards
 - Developed through consultations between governments, workers and employers
 - Open for signature by all ILO member-states
 - Binding on signatories once ratified
-

Social security agreements

- Result of negotiations between countries
- Treaties in international law
- Binding once in force

Multilateral agreements

- Concluded between three or more countries, often on a regional basis
 - Provide a uniform set of rules for all migrants who have worked in the signatory countries and their family members
 - Can be complex to negotiate
-

Multilateral agreements

- Examples of successful multilateral agreements
 - EC Regulation 1408/71
 - New EC Regulation 883/2004
 - CARICOM Multilateral Agreement

Bilateral agreements

- Concluded between two countries
 - Easier to conclude than a multilateral agreement, but complex issues can nonetheless arise
 - Can result in different rights for migrant workers and their families from different countries
-

Bilateral / multilateral

- Choice between pursuing a bilateral or a multilateral agreement should be based on the best interests of migrant workers and their families
 - What is feasible/ attainable?
 - In what period of time?

Reciprocity

- Fundamental to all social security agreements
 - Two elements
 - Each Party agrees to apply the same mechanisms as the other Party(ies)
 - Reasonable comparability of obligations
-

Social Security Agreements

Module 1: Introduction to the coordination of social security systems

Module 2: Material and personal scope, equality of treatment, export of benefits

Module 3: The legislation applicable (coverage)

Module 4: Preservation of rights in course of acquisition (totalising)

Module 5: Coordination of medical care (benefits in kind)

Module 6: Administrative provisions

Module 7: Process for negotiating and concluding an agreement

Outline of Module 2

- Material scope
 - Personal scope
 - Equality of treatment
 - Export of benefits (payment of benefits abroad)
 - Definitions
-

Material scope

- Legislation (laws, regulations, decrees) included in the agreement
- Legislation can be
 - Listed specifically by name
(e.g. *Act on Old Age Pensions*)
 - Referred to generically
(e.g. legislative provisions regarding old age pensions)

Personal scope

- Individuals to whom the agreement applies
 - Two approaches
 - Inclusive: All persons who are or have been subject to the social legislation of the Parties and their family members
 - Restricted: Nationality-based
-

Personal scope

- Nationality-based
 - Nationals of the Parties
 - Family members of nationals of the Parties, *without regard to the nationality of the family members*
 - Refugees and stateless persons living in the territories of the Parties

Personal scope

- Nationality-based approach once commonly used
- However this has changed in recent years
- Inclusive approach preferable

Equality of treatment

- First fundamental principle underlying social security agreements
- Overcomes nationality-based restrictions in social security legislation
- Ensures same treatment of all persons covered by an agreement
- Applies to rights and obligations
- Social security agreements should seek widest possible equality of treatment

Export of benefits

- Sometimes known as payment of benefits abroad
 - Second fundamental principle underlying social security agreements
 - Overcomes territorial restrictions on payment of benefits / provision of services
-

Export of benefits

- Separate rules may apply to
 - Export to other Party(ies) to the agreement
 - 'Third States'
- Export to third States may be governed by equality of treatment

Definitions

- Usually need to define key terms
 - Legislation
 - Competent authority
 - Competent institution
 - Benefit
 - Insurance / creditable period
-

Definitions

- Legislation
 - Links to the Article defining the material scope of the Agreement
 - Example: The acts, regulations and other legislative instruments specified in Article II to which the Agreement applies

Definitions

- Competent authority
 - Identifies the ministry or other authority responsible for social security policy and legislation
 - Can name a specific ministry (e.g. Ministry of Labour) or generically (e.g. the Ministry responsible for the legislation to which the Agreement applies)
-

Definitions

- Competent institution
 - Identifies the institution(s) or agency(ies) responsible for administering the social security system.
 - Can name a specific institution (e.g. National Insurance Board) or generically (e.g. the institution responsible for the administration of the legislation to which the Agreement applies)

Definitions

- Benefit
 - Describes in general terms (usually not by title) the benefits included in the Agreement (e.g. any cash benefit payable under the legislation of a Party)
 - Should specify if periodic increases, supplements are included as benefits
-

Definitions

- Insurance periods
 - Identifies the types of periods that will be taken into account for 'totalising' (discussed in Module 4)
 - Many different terms used: insurance period, coverage period, creditable period

Definitions

- Various other terms may be defined, as required
 - Territory
 - National / citizen
 - Worker / employee / self-employed person
 - Family member / survivor
 - Residence / stay
-

Social Security Agreements

Module 1: Introduction to the coordination of social security systems

Module 2: Material and personal scope, equality of treatment, export of benefits

Module 3: The legislation applicable (coverage)

Module 4: Preservation of rights in course of acquisition (totalising)

Module 5: Coordination of medical care (benefits in kind)

Module 6: Administrative provisions

Module 7: Process for negotiating and concluding an agreement

Outline of Module 3

- General rule
 - Special rules
 - Self-employed persons
 - Detached workers
 - Seafarers
 - Government employees
 - Saving provision
-

Objectives

- Eliminate situations in which a worker/ employer would have to contribute to the social security systems of two countries for the same work
- If possible, fill 'gaps' in coverage for migrant workers

General rule

- Work performed in a country should be subject only to the social security system of that country
 - Usually applies to both employees and self-employed persons
-

Self-employed persons

- Two different approaches
 - Self-employed covered in the country in which they carry out their activities (self-employment)
 - Self-employed covered in the country in which they usually reside

Self-employed persons

- Self-employed persons residing in a country using one approach and carrying out activities in a country using the other approach could be
 - Subject to the social security systems of both countries
 - Subject to no social security system
-

Self-employed persons

- Coordinating a system using one approach with a system using the other approach requires identifying the rule to be given priority
 - Country in which the activity (self-employment) is carried out
 - Country of residence

Detached workers

- Definition
 - Employee working for an employer in one country who is assigned, by the employer, to work in the another country for a limited period for the same or a related employer
-

Detached workers

- Definitions
 - Limited period: Depending on terms of the Agreement, as little as one year or as long as five years
 - Related employer: Parent company, subsidiary

Detached workers

- Objective is to ensure the detached worker
 - Has continuing coverage under the social security system of the usual country of work (sending country)
 - Is not subject to the social security system of the receiving country
-

Detached workers

- Requirements
 - Worker must be covered by the social security system of the sending country before the detachment
 - Detachment rule applies only to the work that is the basis of detachment
 - Period of detachment must be limited

Detached workers

- Period can usually be extended in individual cases with the mutual consent of the authorities of the countries concerned
 - Extension is not automatic – it must be requested before the expiry of the original period
-

Seafarers

- Two different approaches
 - Coverage based on the flag a ship is flying ('flag rule')
 - Coverage based on the country in which the contract of employment is concluded

Seafarers

- Seafarers hired in a country using one rule to work on a ship of a country using the other rule could be
 - Subject to the social security systems of both countries
 - Subject to no social security system
-

Seafarers

- Coordinating a system using one approach with a system using the other approach requires identifying the rule to be given priority
 - Flag rule
 - Country in which employment contract concluded

Government employees

- Vienna conventions on diplomatic and consular relations set rules for diplomats and their personal staff
 - Civil servants of one country posted to work in another are only subject to the social security system of the sending country
-

Government employees

- Issue is the social security coverage of 'locally engaged persons' who
 - Reside in a country
 - Are employed in that country by the embassy or mission of another country
 - Are not diplomats or civil servants of the other country

Government employees

- 'General rule' says they should be covered by the social security system of the country of employment
 - But country of employment cannot compel the embassy or mission of another country to pay contributions
 - Provision in agreement gives consent
-

Saving provision

- Coverage is complex
- Unusual situations sometimes arise that require exceptions to the rules just described
- Saving provision allows such exceptions with the mutual agreement of the authorities of the countries concerned

Social Security Agreements

Module 1: Introduction to the coordination of social security systems

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Module 7: Process for negotiating and concluding an agreement

Outline of Module 4

- Entitlement of benefit (invalidity, old age and survivors' benefit)
 - Periods of coverage (insurance)
 - Special schemes or specified employment
 - Different types of periods
 - Overlapping periods
 - Periods of coverage completed in a third State
 - Calculation of pension (benefit)
 - Calculation of old age pension (examples)
 - Bases of assessment
 - Periods of coverage of less than one year
-

Entitlement of benefits

- Invalidity, old age and survivors' benefits depend on
 - periods of coverage (qualifying periods)
 - subject to the legislation at the time of the contingency ("insurance clause")
 - other requirements
 - payment of pensions
 - payment of other benefits

Entitlement of benefits

- Model provisions (ILO Recommendation 167):

Article 5

Aggregation of periods of insurance (coverage)

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the right to benefit conditional upon the completion of periods of insurance, employment, occupational activity or residence, the institution which applies that legislation shall, for the purpose of adding periods together, take account of periods of insurance, employment, occupational activity and residence completed under the corresponding legislation of any other (the other) Contracting Party, in so far as they are not overlapping, as if they were periods completed under the legislation of the first Party.

Entitlement of benefit – “insurance clause”

- Model provisions (continued)
2. Where the legislation of a Contracting Party makes the provision of benefit conditional on the person concerned or, in the case of survivors' benefit, the deceased, having been subject to that legislation at the time at which the contingency arose, that condition shall be deemed to be fulfilled if the person concerned or the deceased, as the case may be, was subject at that time to the legislation of another (the other) Contracting Party or, failing that, if the person concerned or the survivor can claim corresponding benefits under the legislation of another (the other) Contracting Party.

Entitlement of benefits – “payment of pension”

- Model provisions (continued)
3. Where the legislation of a Contracting Party provides that the period of payment of a pension may be taken into consideration for the acquisition, maintenance or recovery of the right to benefit, the competent institution of that Party shall for this purpose take account of any period during which a pension was paid under the legislation of any other (the other) Contracting Party.

Entitlement of benefits – “sickness cash benefit”

- Model provisions (Council of Europe):
Article 20
5. Where the legislation of either Contracting Party makes the granting of invalidity benefits conditional upon the person concerned having received sickness cash benefits or having been incapable of work during a specified period, any period during which, in respect of that incapacity for work, he has, under the legislation of the other Contracting Party, received sickness cash benefits, or, in lieu thereof, continued to receive a wage or salary, is taken into consideration.

Periods of coverage (insurance)

- Periods of contributions
- Periods of employment
- Periods of occupational activity
- Periods of residence
- Equivalent periods

Periods of coverage (insurance)

- Model provisions (ILO Recommendation 167):

Article 1

Definitions

1. For the purpose of these model provisions:

(m) the term “periods of insurance” means periods of contribution, employment, occupational activity or residence which are defined or recognised as periods of insurance by the legislation under which they were completed, and such other periods as are regarded by that legislation as equivalent to periods of insurance;

Periods of coverage (insurance)

- Model provisions (continued)

(n) the terms “periods of employment” and “periods of occupational activity” mean periods defined or recognised as such by the legislation under which they were completed and such other periods as are regarded by that legislation as equivalent to periods of employment or periods of occupational activity respectively;

(o) the term “periods of residence” means periods of residence defined or recognised as such by the legislation under which they were completed;

Periods of coverage (insurance)

- Model provisions (Council of Europe):

Article 1
Definitions

1. For the purpose of this Agreement:

(k) the term “periods of insurance (coverage)” means periods of contribution (employment), occupational activity or residence and equivalent periods completed under the legislation of each Contracting Party;

Special schemes or specified employment

- Miners
- Civil servants
- Farmers

Special schemes or specified employment

- Model provisions (ILO Recommendation 167):

Article 6

Where the legislation of a Contracting Party makes the provision of certain benefits conditional upon the completion of periods in an occupation covered by a special scheme or in a specified occupation or employment, only periods completed under a corresponding scheme or, in the absence of such a scheme, in the same occupation or in the same employment, as the case maybe, under the legislation of other Contracting Parties (the other Contracting Party), shall be taken into account for the award of such benefits. . . .

Different types of periods

- hours, days, weeks, months, quarters, years (detailed conversion provisions)
- Model provision (example)

Article ...

Aggregation of periods of insurance (coverage)

...

5. The periods of insurance (coverage) completed under the legislation of one contracting party expressed in days shall be converted into months by the institution of the other contracting party by dividing the days by 30; rest of days shall be treated as a whole month.

Overlapping periods

- Entitlement (only if not overlapping)
- Calculation
 - voluntary insurance
 - equivalent periods

Overlapping periods

- Model provision (example):

Article 13

- The competent institution shall apply Articles 11 and 12 according to the following rules: . . .
 - (5) For the application of subparagraphs (1) (a) and (b) of Article 12, overlapping periods of coverage under the legislation of both Parties shall be taken into consideration as if they did not overlap.

Periods of coverage in a third State

- According to national legislation
- Special provisions

Periods of coverage in a third State

- Model provisions (example):

Article 15

- (1) If a person is not entitled to the payment of a benefit on the basis of the periods of coverage completed under the legislation of both Parties, added together as provided in Article 11, the entitlement of that person to the payment of that benefit shall be determined by adding together these periods and periods of coverage completed under the legislation of a third State with which one Party is (or both Parties are) bound by a social security instrument which provides for totalising periods.

Calculation of pensions (benefits)

- National entitlement
- Pro-rata calculation
 - theoretical amount
 - special cases
 - amount payable
 - amount not dependent on periods
 - maximum of periods
 - advantages and disadvantage
- Direct calculation

Pro-rata calculation of pensions

- Model provisions (Council of Europe):

Article 21

Award of benefits

Alternative 1: ("Pro rata temporis" calculation)

1. Where a person has been subject successively or alternately to the legislation of both Contracting Parties, the institution of each Party shall determine, in accordance with the legislation it applies, whether such person or his survivors qualifies or qualify for benefit, having regard, where appropriate, to the provisions of Article 20.
2. Where the person concerned satisfies the conditions specified in paragraph 1 of this Article under the legislation of either Contracting Party without regard to the provisions of Article 20, the competent institution of that Contracting Party shall calculate the benefits solely on the basis of the periods completed under the legislation it applies.

Calculation of pensions

- Model provisions (continued) – Pro-rata calculation
3. Where the person concerned satisfies the conditions specified in paragraph 1 of this Article under the legislation of either Contracting Party, regard being had only to the provisions of Article 20, the competent institution of this Contracting Party shall calculate the benefit as follows:
 - (a) the competent institution shall calculate the theoretical amount of benefits payable if all the periods completed under the legislation of both Contracting Parties had been completed solely under the legislation which that institution applies;
 - (b) however, in the case of benefits the amount of which does not depend on the length of periods completed, that amount shall be taken to be the theoretical amount referred to in the preceding subparagraph;

Calculation of pensions

- Model provisions (continued) – Pro-rata calculation

- (c) the competent institution shall then calculate the actual amount of benefit payable by it to the person concerned on the basis of the theoretical amount calculated in accordance with the provisions of sub-paragraph a or of sub-paragraph b of this paragraph, as appropriate, and in proportion to the relationship between the periods completed before the contingency arose under the legislation it applies and the total of the periods completed before the contingency arose under the legislation of both Contracting Parties;
- (d) if the total of the periods completed under the legislation of both Contracting Parties before the contingency arose exceeds the maximum period required by the legislation of either Party for the receipt of full benefit, the institution of that Party shall, when applying the provisions of sub-paragraph a of this paragraph, take this maximum period into account instead of the total of the periods completed, without however being obliged to grant greater benefit than the full benefit provided for in the legislation it applies.

Direct calculation of pensions

- Model provisions (Council of Europe):

Article 21 Award of benefits

Alternative 2: (Direct calculation)

1. Where, under the legislation of either Contracting Party entitlement to benefit also exists without the application of Article 20, the competent institution of that Party shall determine the amount of payable benefits solely on the basis of periods of insurance completed under that legislation.
2. Where, under the legislation of either Contracting Party entitlement to benefit exists only with the application of Article 20, the competent institution of that Party shall determine the amount of payable benefit solely on the basis of periods of insurance completed under that legislation and the following provisions:

Direct calculation of pensions

- Model provisions (continued)
 - (a) benefits or parts of benefits the amount of which, under the legislation of either Contracting Party, does not depend on the duration of the periods of insurance completed shall be calculated in proportion to the ratio of the duration of the periods of insurance reckonable for the calculation under this legislation up to 30 years, but at most up to the full amount.
 - (b) where, under the legislation of either Contracting Party, subsequent to periods the occurrence of the contingency are reckonable for the calculation of invalidity or survivors' benefits, those periods shall be reckoned only in proportion to the ratio of the duration of the periods of insurance to be taken into account for the calculation under this legislation to two-thirds of the time between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but at most up to the full period.
 - (c) sub-paragraph a shall not apply to:
 - (i) benefits resulting from supplementary insurance,
 - (ii) means-tested benefits ensuring a minimum income.

Calculation of old age pensions (example)

- A person has completed the following periods of coverage in two States:
 - State A : 20 years Qualifying period: 20 years
 - State B : 5 years Qualifying period: 15 years

15 years
25 years
- National calculation of pension:
 - State A: 50 % for first 20 years (2.5 % for each year)
1.5 % for each additional year
 - State B: 30 % for first 15 years (2 % for each year)
2 % for each additional year

Calculation of old age pensions (continued)

- Pro-rata calculation, national entitlement and direct calculation:

1) State A

Periods of coverage		Theoretical amount	Pro-rata factor	Amount payable	National entitlement
State A	State B				
20 years	5 years	57.5%	20/25	46.00%	50%
20 years	15 years	72.5%	20/35	41.43%	50%
20 years	25 years	87.5%	20/45	38.89%	50%

Theoretical and pro-rated amounts:

20 years: $50\% + (5 \times 1.5\%) = 57.5\%$; $57.5\% \times 20/25 = 46.00\%$

20 years: $50\% + (15 \times 1.5\%) = 72.5\%$; $72.5\% \times 20/35 = 41.43\%$

20 years: $50\% + (25 \times 1.5\%) = 87.5\%$; $87.5\% \times 20/45 = 38.89\%$

National entitlement: 20 years = 50 %

(Direct calculation: $20 \times 2.5\% = 50\%$)

Calculation of old age pensions (continued)

2) State B:

Periods of coverage		Theoretical amount	Pro-rata factor	Amount payable	National entitlement
State A	State B				
20 years	5 years	50%	5/25	10%	None
20 years	15 years	70%	15/35	30%	30%
20 years	25 years	90%	25/45	50%	50%

Theoretical and pro-rated amounts

5 years: $30\% + (10 \times 2\%) = 50\%$; $50\% \times 5/25 = 10\%$

15 years: $30\% + (20 \times 2\%) = 70\%$; $70\% \times 15/35 = 30\%$

25 years: $30\% + (30 \times 2\%) = 90\%$; $90\% \times 25/45 = 50\%$

National entitlement: 5 years: None ; 15 years: 30 % ; 25 years: 50 %

Direct calculation:

5 years: $5 \times 2\% = 10\%$; 15 years: $15 \times 2\% = 30\%$; 25 years: $25 \times 2\% = 50\%$

(Not: 5 years: $30\% \times 5/30 = 5\%$; 15 years: $30\% \times 15/30 = 15\%$; 25 years: $30\% \times 25/30 + (10 \times 2\%) = 45\%$)

Calculation of pensions (benefits)

Bases of assessment

- Determination on national basis
- Adjustment
- Model provisions (European Convention):

Article 30

1. For the calculation of the theoretical amount referred to in Article 29. paragraph 2:
 - a) . . .
 - b) where the legislation of a Contracting Party provides that benefits shall be calculated on the basis of the amount of earnings, contributions or increases, the earnings, contributions or increases to be taken into account by the competent institution of that Party in respect of periods completed under the legislation of other Contracting Parties shall be determined on the basis of the average earnings, contributions or increases recorded for the periods completed under the legislation of the first Party;

Calculation of pensions (benefits)

Bases of assessment (continued)

- Model provisions (example):

Article 13

1. The competent institution shall apply Articles 11 and 12 according to the following rules:
 - a) . . .
 - b) the basis of assessment shall be determined exclusively on periods of coverage under the national legislation;

Calculation of pensions (benefits) Periods of coverage under one year

- No pension payable, if no entitlement only on those periods
- Periods to be taken into account in the other Contracting Party
 - for entitlement
 - for calculation

Calculation of pensions for periods of coverage of less than one year

- Model provisions (ILO Recommendation 167):

Article 9

Period of insurance (coverage) of less than one year

1. Notwithstanding the provisions of Article 8, where the total duration of the periods completed under the legislation of a Contracting Party is less than one year and where, taking into account only those periods, no right to benefit exists under that legislation, the institution of the Party concerned shall not be bound to award benefit in respect of the said periods.
2. The periods referred to in the preceding paragraph shall be taken into account by the institution of each of the other Contracting Parties (of the other Party) concerned for the purpose of applying the provisions of . . . Article 21, as if those periods had been completed under the legislation it applies.

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Module 6: Administrative provisions

Module 7: Process for negotiating and concluding an agreement

Outline of Module 5

- Aggregation of periods of coverage (insurance)
 - Periods of coverage (insurance)
 - Entitlement
 - Provision of benefits in kind
 - (Temporary) Stay in the other Contracting Party
 - (Ordinary) Residence in the other Contracting Party
 - Pensioners and members of their family
 - Additional provisions
 - Reimbursement of costs
 - Example for an agreement with no refund of costs
-

Aggregation of periods of coverage (insurance)

- Periods of coverage (insurance)
- Entitlement
 - Benefits in kind (medical care, hospital care, pharmaceutical supplies)
 - Cash benefits (sickness cash benefit, maternity cash benefit)

Aggregation of periods of coverage (insurance)

- Model provisions (ILO Recommendation 167):

Article 3

Aggregation of periods of coverage

Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the right to benefit conditional upon the completion of periods of insurance, employment, occupational activity or residence (coverage), the institution which applies that legislation shall, for the purpose of adding periods together and to the extent necessary, take account of periods of insurance, employment, occupational activity and residence (coverage) completed under the corresponding legislation of any other Contracting Party (the other Contracting Party), in so far as they are not overlapping, as if they were periods completed under the legislation of the first Party.

Provision of benefits in kind – (temporary stay)

- (Temporary) Stay in the other Contracting Party (seconded workers, tourists)
 - immediate necessity
 - according to the legislation of the other Contracting Party
 - general rule: refund of costs (actual amount) by the competent institution

Provision of benefits in kind – (temporary stay)

- Model provisions (Council of Europe):

Article 14

Stay in the other Contracting Party

1. Persons who satisfy the conditions for entitlement to benefits under the legislation of either Contracting Party and whose condition necessitates the immediate provision of benefits during their stay in the territory of the other Contracting Party shall receive benefits in kind, provided at the expense of the competent institution by the institution of the place of stay in accordance with the provisions of the legislation applied by the latter institution, as if such persons were affiliated to it.

.....

4. The provisions of the preceding paragraphs shall apply, *mutatis mutandis*, to members of the families in respect of benefits in kind.

Provision of benefits in kind – (ordinary residence)

- (Ordinary) Residence in the other Contracting Party (frontier workers, members of the family of migrant workers)
 - no immediate necessity
 - according to the legislation of the other Contracting Party
 - general rule: refund of costs (lump sum) by the competent institution

Provision of benefits in kind – (ordinary residence)

- Model provisions (Council of Europe):

Article 15

Residence in the other Contracting Party

1. Persons who reside in the territory of either Contracting Party and who satisfy the conditions for entitlement to benefits under the legislation of the other Contracting Party shall receive, in the territory of the Contracting Party in which they are resident, benefits in kind provided at the expense of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation which the latter institution applies, as if such persons were affiliated to it.

Provision of benefits in kind – (ordinary residence)

- Model provisions (continued)

4. The provisions of the preceding paragraphs shall apply, *mutatis mutandis*, in respect of benefits in kind for members of the family who reside in the territory of the other Contracting Party in so far as they are not entitled to such benefits arising from a professional activity under the legislation of that Contracting Party.

Provision of benefits in kind – (pensioners)

- Pensioners and members of their families
 - Pensioners receiving pensions from both Contracting Parties
 - Pensioners receiving a pension from one Contracting Party and residing in the other Contracting Party
 - Family members of a pensioner residing in the other Contracting Party
-

Provision of benefits in kind – (pensioners with two pensions)

- Model provisions (Council of Europe):

Article 17

Pensioners and members of their family

1. A pensioner receiving a pension under the legislation of both Contracting Parties shall receive benefits in kind under the legislation of the Contracting Party in whose territory he is resident, as if he were a pensioner under the legislation of that Party only.

Provision of benefits in kind – (pensioners with two pensions)

- Model provisions (continued)
 2. A pensioner receiving a pension under the legislation of either Contracting Party who is resident in the territory of the other Contracting Party shall be entitled to benefits in kind on condition that he would be entitled to them if he were resident in the territory of the former Party. The benefits in kind shall be provided by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as if the pensioner were entitled to such benefits under that legislation; however, the cost shall be borne by the competent institution of the other Party.

Provision of benefits in kind – (members of the family of pensioners)

- Model provisions (continued)
 3. Where the members of the family of a pensioner receiving a pension under the legislation of either or both Contracting Parties are resident in the territory of the Contracting Party other than that in which the pensioner himself resides, they shall receive benefits in kind as if the pensioner were resident in the same territory. The benefits in kind shall be provided by the institution of the place of residence of the members of the family, in accordance with the provisions of the legislation it applies; however, the cost shall be borne by the institution of the pensioner's place of residence.
 4. The provisions of Article 14. and of Article 15. paragraph 4. shall apply, *mutatis mutandis*.

Provision of benefits in kind – additional provisions

- Cases of authorisation
 - Returning to the place of residence
 - Special treatment
 - Prostheses, major appliances and other substantial benefits in kind
-

Reimbursement of the costs of benefits in kind

- Refund of actual amount
- Refund on the basis of a lump sum (average costs)
- No cost refund

Reimbursement of the costs of benefits in kind

- Model provisions (Council of Europe):

Article 17

Reimbursement

1. The competent institution shall refund the actual amount of benefits in kind provided on its behalf by the institution of the place of stay or residence under the provisions of Articles 14. and 15. and Article 17. paragraphs 2. and 3.
2. The competent authorities of both Contracting Parties may agree on other arrangements for refunds, or they may agree that there shall be no refunds between the institutions concerned.

Example of agreement with no cost refund

- Model provisions (example):

Article ...

1. A national of one Contracting Party who falls ill, meets an accident or, for any other reason, is in urgent need of medical treatment when in the territory of the other Party, will be entitled to receive hospital treatment in that territory under the same conditions as a national of the other Party who is ordinary resident in the territory of that Party.
2. The provisions of paragraph 1. of this Article shall apply *mutatis mutandis* to an national of one Contracting Party who is ordinary resident of the other Contracting Party during a temporary stay in the first Contracting Party.

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Module 6: Administrative provisions

Module 7: Process for negotiating and concluding an agreement

Outline of Module 6

- Mutual cooperation and assistance
 - Medical examinations
 - Submission of claims, declarations and appeals
 - Administrative arrangements
 - Forms for the implementation
 - Other provisions
-

Mutual cooperation and assistance

- Arrangement for the necessary administrative measures
- Liaison authorities
- Mutual assistance
- Direct contacts
- Use of official languages

Mutual cooperation and assistance

- Model provisions (Council of Europe):

Article 32

Arrangements for administration and co-operation

1. The competent authorities of both Contracting Parties shall determine the administrative measures necessary for the application of this Agreement.
 2. . . .
 3. The competent authorities of both Contracting Parties shall establish liaison bodies for the purpose of facilitating the implementation of this Agreement.
 4. The competent authorities and institutions of the two Contracting Parties shall assist one another on any matter relating to the application of this Agreement as if the matter affected the application of their own legislation. Such assistance shall be free of charge.
-

Mutual cooperation and assistance

- Model provisions (continued):

Article 33

Use of official languages

1. For the purposes of the application of this Agreement, the authorities and the institutions of the two Contracting Parties may communicate with one another and with all interested parties, whatever their place of residence, directly in their official languages.
2. No claim or document shall be rejected on the ground that it is written in an official language of the other Contracting Party.

Medical examinations

- Invalidity or other reasons
- Institution of the other Contracting Party
- Allocation of costs

Provision of benefits in kind (temporary stay)

- Model provisions (Council of Europe):

Article 32

Arrangements for administration and co-operation

...

5. If a person resides or stays in the territory of either Contracting Party has claimed, or is receiving, benefit under the legislation of the other Contracting Party and a medical examination is necessary, the competent institution or the institution of the place of residence or of temporary residence (stay) of the first Contracting Party shall arrange for such examination if the competent institution of the latter Contracting Party so requests. The cost of the examination shall, in principle, be met by the competent institution of the Contracting Party which has requested the examination.

Submission of claims, declarations and appeals

- Within prescribed periods
- Place of residence
- Transmission without delay

Submission of claims, declarations and appeals

- Model provisions (Council of Europe):

Article 35

Submission of a claim, (declaration) or appeal

1. Any claim, (declaration) or appeal which should, for the purposes of the legislation of either Contracting Party, have been submitted within a prescribed period to an (authority,) institution (or jurisdiction) of that Contracting Party shall be treated as if it had been submitted to that (authority,) institution (or jurisdiction) if it is submitted within the same period to a corresponding (authority,) institution (or jurisdiction) of the other Contracting Party.
2. The authority, institution or jurisdiction receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or jurisdiction of the first Party.

Administrative arrangements

- Extent of provisions
 - Liaison authorities
 - Procedure for determination of benefits
 - Forms
-

Administrative arrangements

- Model provisions (example):

Article ..

1. Where a claim arising under the provisions of the Agreement is received by the institution of one Party and it appears that there may be qualification for a benefit under the legislation of the other Party, the former institution will notify the institution of the latter Party, sending all relevant information.
2. Where a claim is received under paragraph 1. of this Article the former institution will verify all necessary particulars of the claimant, the insured person and his dependants.
3. The institutions of each Party will thereafter notify each other of any facts relevant to the determination of the claim and will send, where appropriate, medical reports.
4. The institution of each Party will notify each other of the decision on the claim.

Forms for the application

- Responsibility for forms
 - Bilingual (if necessary)
 - Certification of qualifying periods (in the case of medical care: entitlement to benefits in kind)
 - Other relevant information (e. g. medical reports)
-

Other provisions

- Exemption from any charges (fees) or need for authentication for necessary documents
- Recovery of undue payments (advance payments, social assistance)
- Transfer of benefits or payments to the other Contracting Party
- Protection of personal data (confidentiality)
- Liability of a third party
- Enforcement procedures for court decisions, contributions and other claims

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Outline of Module 7

- Preliminary discussions
 - Preliminary draft
 - Negotiations
 - Review of agreed text
 - Signing
 - Approval
 - Administrative arrangements
 - Entry-into-force
-

Preliminary discussions

- Informal meeting of experts to
 - Exchange information on their social security systems
 - Inform one another on preferences for the application of basic principles (e.g. equality of treatment, export of benefits etc)

Preliminary draft

- Starting point for future negotiations
 - Needs to be decided which country will prepare the draft – preferably at the preliminary discussions
 - Alternative is for each country to prepare its own
 - Must be sent well in advance to the other country(ies)
-

Negotiations

- Involves a clause-by-clause review of the preliminary draft(s)
- Objective is to agree, to the greatest extent possible, on the wording of each clause
- If wording of a clause cannot be agreed, it should be set aside for consideration later

Negotiations

- Two or more rounds of negotiations often required to complete work
 - At the end of each round, the host should prepare minutes of the discussions
 - Minutes must be agreed by all countries involved
-

Negotiations

- Revised text of the agreement, showing provisions and changes agreed, should be attached to the minutes
- When negotiations completed and text agreed, heads of delegations initial the text

Review of agreed text

- After negotiations completed, each side sends the agreed text to its own national authorities (justice ministry, foreign ministry etc) for review
 - Review is not an occasion to re-open negotiations
 - Modifications arising from such review should be kept to a strict minimum
-

Signing

- Signing takes place after review completed and modifications (if any) agreed by all
- Each country must have an original copy of the signed agreement
- Protocol for signing usually determined by foreign ministries

Approval

- Most agreements do not enter into force on signing
 - Approval or ratification usually required
 - Procedures vary from country to country
 - Could involve council of ministers, Parliament or both
-

Administrative arrangement

- Social security agreement
 - Establishes the legal framework for coordination
 - Modifies national law
 - Sets out the principles underlying administrative assistance between the authorities and institutions of the countries concerned

Administrative arrangement

- Administrative arrangement
 - Describes in greater detail how the administrative assistance will be provided
 - Sets out the modalities for providing the assistance, the procedures to be used etc
-

Administrative arrangement

- Administrative arrangement
 - Should be concluded before the agreement enters into force
 - Should not go beyond administrative issues (e.g., deal with rights and obligations of insured persons)

Entry into force

- Final step in the process
 - Can only occur after each country has completed its legal requirements for approval or ratification
-

Time required

- Time required to complete the 8-step process can vary greatly from agreement to agreement
- Rarely possible to complete the process is less than 18 months
- Sometimes much longer is needed

LIST OF GUIDES AND INSTRUMENTS

General reference on migrant workers and social security

- » Social Security for Migrant Workers, 1996
- » Towards a Fair Deal for Migrant Workers in the Global Economy, 2004
- » ILO Multilateral Framework on Labour Migration - Non-Binding Principles and Guidelines For A Rights-Based Approach to Labour Migration, 2006
- » Filling the Gap of Social Security for Migrant Workers: the ILO's Strategy, 2006
- » International Migration Brief: International Labour Migration and Development – The ILO Perspective, 2007
- » International Migration Brief: Rights, Labour Migration and Development – The ILO Approach, 2007
- » Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements, 2008
- » International Migration Statistics 2009

(Available in English)

ILO instruments on the coordination of social security

- » Convention No. 19 Equality of Treatment (Accident Compensation), 1925
- » Recommendation No. 25 Equality of Treatment (Accident Compensation), 1925
- » Convention No. 48 Maintenance of Migrants' Pension Rights Convention, 1935
- » Convention No. 49 Migration for Employment (revised), 1949
- » Convention No. 102 Social Security (Minimum Standards), 1952
- » Convention No. 118 Equality of Treatment (Social Security), 1962
- » Convention No. 143 Migrant Workers (Supplementary Provisions), 1975
- » Convention No. 157 Maintenance of Social Security Rights, 1982
- » Recommendation No. 167 Maintenance of Social Security Rights, 1983

(Available in English and French)

United Nations instruments

- » International Convention on the Protection of Migrants and their Families, 1990

(Available in English, French, Russian and Spanish)

Council of Europe instruments on the coordination of social security

- » European Convention on Social and Medical Assistance, 1953*
- » Protocol to the European Convention on Social and Medical Assistance, 1953*
- » European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors, 1953*
- » Protocol to the European Interim Agreement on Social Security Schemes relating to Old Age, 1953*
- » European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, 1953*
- » Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, 1953*
- » European Convention on Social Security, 1972
- » Supplementary Agreement for the Application of the European Convention on Social Security, 1972
- » Model Provisions for a Bilateral Social Security Agreement and Explanatory Report, 1998
- » Co-ordination of Social Security in the Council of Europe: Short guide, 2004
- » Explanatory Report on the Interim Agreements concerning Social Security Coordination, 2006

(Available in Albanian, English, French, Macedonian, Romanian, and Serbo-Croatian)

(*Available in English and French)

European Union instruments on the coordination of social security

- » EU Regulation No. 883/2004
- » EU Implementing Regulation No. 987/2009
- » EEC Regulation No. 1408/71
- » EEC Implementing Regulation No. 574/72
- » The EU Provisions on Social Security - Your rights when moving within the European Union - Undate 2010

(Available in Bulgarian, Czech, English, Estonian, French, Hungarian, Latvian, Lithuanian, Polish, Romanian, Slovakian, and Slovenian)

