

Social security portability and coordination

High level capacity building workshop

Addis Ababa, 6 December, 2018

Andrew Allieu, ILO

**What does coordination of SS
mean?**



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



What does social security coordination mean?

- 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



What does social security coordination mean?

- The rules on social security coordination do not replace national systems.
- All countries are free to decide who is to be insured under their legislation, which benefits are granted and under what conditions.
- Common rules to protect social security rights of migrant workers when moving within (EAC) member states
- Not to be confused with **harmonization**

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

The rules on social security coordination do not replace national systems.

Harmonisation:

► Establishes 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



The great debater exercise I

Harmonization versus Coordination?





Coordination / harmonisation

Harmonisation

- ➡ Theoretically possible, *but* ...
- ➡ Practical / political challenges would be enormous

Coordination

- ➡ Tried and tested approach widely used by countries around the world



Coordinating social security

➤ ILO Conventions

- Establishes international standards

➤ Social Security Agreements

- Bilateral
- Multilateral



Introduction to social security agreements



social security agreements

A social security agreement coordinates the social security schemes of two or more countries in order to:

- to overcome, on a reciprocal basis, the barriers that might otherwise prevent migrant workers and the members of their families from receiving benefits under the systems of any of the countries in which they have worked.



social security agreements

- Social security agreements also ensure that a migrant worker will not have to contribute to the social security systems of two or more countries for the same work.
- Agreements also set out the terms and conditions under which the social security authorities and institutions of different countries will assist each other in order to enable migrant workers and the members of their families to apply for, and receive, benefits.



The great debater exercise II – the revenge

Multilateral

versus

Bilateral social security
agreements



social security agreements

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



social security agreements

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



social security agreements

Bilateral or 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?

Social security agreements

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

Concluding agreements – some challenges

- Insufficiently developed social security systems of migrant sending countries: Impediment for agreements on « reciprocal » basis
- Difference in social security systems (e.g. insurance - provident fund systems)
- Administrative capacity is insufficient to ensure that contributions are paid
- IT needed to facilitate the implementation of SS agreements

Advantages agreements

- Defines agreed minimum standards for migrant workers access to social protection
- Equal treatment between migrants from and within the same region (non-discrimination)
- Progressive extension according to a country's context
- Flexibility in the type of schemes member States establish, in order to implement the Convention
- Flexibility in legal and institutional arrangements
- Increases the populations' confidence in schemes and the administration
- Facilitates labour mobility



Scope and objectives of social security agreements

objectives of SS agreements

A social security agreement usually pursues five objectives to protect the social security rights of migrant workers and the members of their families. These fall under the headings of

- equality of treatment,
- payment of benefits abroad (export of benefits),
- determination of the applicable legislation,
- maintenance of rights in course of acquisition (totalizing),
- and administrative assistance.

Material (legislative) scope

- Legislation (laws, regulations, decrees) included in the agreement
- Legislation can be listed specifically by name (e.g. *Act on Old Age Pensions of 1967*); or
- Referred to generically (e.g. legislative provisions regarding social security or old age pension)

In draft EAC Directive for e.g. “ *this directive shall apply only to the legislation of the partner state listed in schedule 1 of this directive*”

- non-contributory schemes??



Personal scope

- Individuals to whom the agreement/instrument applies

Two approaches

- Inclusive: All persons who are or have been subject to the social legislation of the Parties and their family members
- Restrictive: Nationality-based



Personal scope

Nationality dimension

- 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

Equality of treatment

- First fundamental principle underlying social security agreements
- Overcomes nationality-based restrictions in social security legislation
- Any worker or self-employed person citizen (national) of a Partner State, and
- Any person, irrespective of citizenship (nationality), who derives rights from such a worker or self-employed person,
- Shall enjoy the benefits of the legislation of a Partner State,
- Shall be subject to the obligations of that legislation, under the same conditions as the citizens (nationals) of that Partner State.



Export of benefits

- Sometimes referred to 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 party States’
- Export to third States may be governed by equality of treatment



The applicable legislation

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

The applicable legislation

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
 - There is a possibility of double or no coverage

How to manage this???



The applicable legislation

What about?:

- Dispatched workers
- Seafarers
- Government employees



**Preservation of rights in course of
acquisition (totalization or aggregation
of periods of insurance)**






Objective of totalizing

- Assist migrant workers to meet the requirements of a qualifying period for entitlement to benefits under the social security systems of the countries in which they have worked
- Qualifying periods are almost always a condition for entitlement to long-term benefits (old-age, disability, survivors)
- Often migrant workers have been insured under a host country's social security system, but not for a period of sufficient length, or not at the "certain" (recent) time, to qualify for a benefit

Definition: "qualifying period" means the period of insurance needed to qualify for a benefit



Objective of totalizing

Two types of qualifying period

- A minimum period of insurance (example: for entitlement to an old-age pension, at least 15 years of contribution)
- A recent period of insurance (example: for entitlement to a disability pension, at least 6 months of contribution in the 12 months before the onset of the disability)

How totalizing works

If a person does not fulfil the qualifying period for a country's benefit using only insurance periods completed under that country's social security system, insurance periods completed under the other country's system may be added to periods under the first country's system to fulfil the qualifying period

How totalizing works

- All periods under a country's social security system, including equivalent periods (if any), are taken into account
- Overlapping periods (if any) are only taken into account once
- A person must have completed a minimum period (usually one year) under a country's social security system before there is a right to totalizing


Calculating benefits

- Three ways to calculate the amount of benefit to be paid when entitlement is determined through totalizing
- Proportional calculation
- Direct calculation
- Integration

Parties to an agreement can use different calculation methods



Negotiating social security Agreements



Negotiating social security Agreements – key steps/elements

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



Negotiating social security Agreements

➡ 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.)



Negotiating social security Agreements

➡ Preliminary draft

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

Negotiating social security Agreements

➡ Negotiations

- Could be extensive and protracted - two or more rounds
- At the end of each round, the host should prepare minutes of the discussions
- Minutes must be agreed by all countries involved
- 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

Negotiating social security Agreements

➡ 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
- Normally, the review stage should not be an occasion to re-open negotiations
- Modifications arising from such review should be kept to a strict minimum

Negotiating social security Agreements

➡ **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 or ministries in charge of regional cooperation

Negotiating social security Agreements

➡ Approval

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

Negotiating social security Agreements

➤ **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.

Negotiating social security Agreements

➡ **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)



Forms

The AA refers to various forms that will have to be used to exchange information between countries.

Most commonly used forms include those on:

- Credited periods
- Benefit request
- Applicable legislation
- Medical report



Most common issues to look at.

- Totalization of periods:
 - ID worker?
 - Which periods do you take into account?
 - Is the nationality important?
 - What if the periods of contributions have been paid in a third country?
- Payments abroad:
 - In which currency?
 - Who supports the bank transfer costs?
 - Any fiscal taxes?
- Data exchange of civil status and death – plays a significant role in calculation of benefits

Negotiating social security Agreements

➡ **Entry into force**

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

Questions ... ?

