SOCIAL SECURITY AGREEMENTS OF LEGALLY EMPLOYED – CURRENT PRACTICES, OPPORTUNITIES AND PERSPECTIVES FOR GEORGIA

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Author:
IRINA BADURASHVILI

Editor and Responsible for Publication:
KHATUNA BURKADZE

Tech. Editor:
IRAKLI SVANIDZE

C O N T E N T

Executive Summary

According to the United Nations[1] 3.2 per cent of the world's population – that is, almost 232 million people – live outside their country of birth. This number is much higher in comparison with the 175 million in 2000 and 154 million in 1990. Most international migrants are of working age (20 to 64 years) and account for 74 per cent of the total. Globally, women account for 48 per cent of all international migrants.

These substantial and increasing migration flows raise questions about social security for international migrants. Migrants move across countries and hence across distinctively regulated labour markets and social security systems, which creates specific vulnerabilities. Newly arrived migrants are in a particularly vulnerable position as they are away from their home community and have no access to important informal social networks and safety nets. In addition, access to formal social services in the new host country is often restricted for many reasons, such as an informal labour market involvement, employer monopsony and delayed access until some months or years after an arrival. This is further exacerbated by the fact that many of the comparatively rich host countries tighten the provisions of their social security systems in a way that precludes access of migrants.

At the same time, migrants might have contributed to formal social security systems in their country of origin or former host countries, yet any rights to benefits from these systems might cease to exist or substantially diminish with the arrival to the new host country. Similarly, any contributions made to the social security system of the new host country might be lost after the migrant departs, because the associated social rights and benefits might not be portable across the international borders. Finally, migrants – in particular low-skilled, undocumented migrants – face challenging labour market conditions leading to exclusions from national security systems in host countries, related to cross-border recruitment, information asymmetries between employers and migrants, and visa requirements tied to an employment.

Hence, the atypical life cycle of migrants requires special provisions for their social security to ensure that they can adequately manage their risks. Due to the underlying economic and demographic global imbal-

[1] http://esa.un.org/unmigration/wallchart2013.htm

ances, this trend is likely to persist, which calls for policies that effectively manage migration to the benefit of all – migrants, origin countries and host countries.

Social protection for international migrants consists of four components[2]:

(1) Access to formal social protection – that is, social security and social services – in host and origin countries;

(2) Portability of vested social security rights between host and origin countries;

(3) Labour market conditions for migrants in host countries and the recruitment process for migrants in the origin country; and

(4) Access to informal networks to support migrants and their family members.

First, access to social services is crucial for migrants as it affects their level of vulnerability. Social services include health-care benefits, long-term social security benefits such as old-age and disability benefits, and short-term benefits such as social assistance, maternity and unemployment benefits, family allowances as well as public housing and education. Migrants do not often have a possibility to fully benefit from these social services, either because access is only granted some time after arrival, or because family members are spread across various countries. Second, portability of social security rights is important not only to migrants for avoiding financial losses, but also to social security institutions due to principles of actuarial fairness.

In principle, access to social services, such as health and education, is governed by the UN International Convention on the Protection and Rights of All Migrant Workers[3], adopted in 1990, which is ratified by over 40 (mainly low and middle-income) countries. High-income countries might be reluctant to sign the Convention, because it provides (too) many entitlements for migrant workers. Existing social security measures for workers are often a problem for migrants in the developed countries. Formal social security for international migrants is essentially

[2] Sabates-Wheeler, R., (2009): *Social security for migrants: Trends, best practice and ways forward,* International Social Security Association (ISSA), Geneva

[3] available at: http://www.migrationeducation.org/fileadmin/uploads/cmw_02.pdf

a matter of national legislation. The host country regulates what benefits migrants have access to and under what conditions. However, even in the countries, the legislation of which prescribes an equality before the law, protection for migrant workers is limited. Where formal legislation is effective, it defines what benefits can be received after leaving the country.

The European Union (EU) has the most advanced and complex system of portability of social benefits. EU nationals enjoy full non-discriminatory access to all and portability of most social benefits. With respect to third-country nationals, equality of treatment is granted after a certain period of residence (no later than after five years according to the EU Directive 109/2003). This means that even third-country nationals enjoy full access to and portability of social benefits within the EU no later than after five years of residence. Additionally, EU nationals can export their pensions to literally any country in the world. The coverage of health care outside the EU is much less developed.

At the global level, legal provisions relating to social security for international migrants are scarce, with the exception of bilateral (and multilateral) social security agreements. These currently constitute the best practice on how to coordinate access to and portability of social benefits for migrants.

Bilateral social security agreements can currently be considered as the best practice to enhance social security of migrants from and to high-income countries. Bilateral social security agreements usually include provisions on non-discrimination between nationals and migrants with respect to social security and rules of cooperation between the social security institutions of the signatory countries. The latter coordinate the totalization of contribution that migrants accrue in the two countries and regulate the transfer and payment of acquired social security entitlements. Most agreements refer to long-term benefits like old-age, disability and deceased breadwinners' family (survivors') pensions and other annuities. Health-care benefits are to a much lesser extent subject to social security agreements. In addition, purely tax-funded – as opposed to contributory – benefits such as social assistance or maternity allowances are usually explicitly exempt from portability.

Social security agreements are also arranged on the multilateral level as the EU, CARICOM (Caribbean Community), MERCOSUR (Mercado Común del Sur). The EU is also leading efforts to enhance social security cooper-

ation within the Euro-Mediterranean Partnership (EMP); this initiative entailed concluding social security agreements with Morocco, Tunisia and Algeria.

Many EU member states have also concluded bilateral social security agreements with non-EU countries and have created an extensive global network of portability arrangements. The United Kingdom, which is receiving and sending large numbers of migrants, is a good example of an EU country having extensive national, bilateral and multilateral legislation in place.

In order to stimulate agreements initiated by receiving countries, the International Organization for Migration (IOM) states that agreements make it possible to serve the labour market more efficiently and help reduce illegal migration by offering alternative legal channels for work migration. Another aspect is that agreements make it easier in negotiations to obtain assurance from the sending country that it will lend its cooperation to managing illegal migration by making remigration possible. To the advantage for the sending countries, the IOM points out the improved access to the international labour market offered by agreements and the opportunities they provide to negotiate wages, living conditions and other such factors for their fellow citizens abroad. Agreements can also facilitate the development or improvement of professional knowledge – for example, in the form of training programmes for young professionals. In addition, agreements form a basis for a continual flow of funds from migrants to their country of origin, transfer of knowledge and general development of human capital. All these aspects contribute substantially to the development of the sending country[4].

[4] International Organization for Migration (IOM), (2005): *World Migration 2005: Costs and benefits of international migration*, IOM World Migration Report Series, Vol. 3, IOM, , Geneva, p. 249-250.

1. Current policies on social security agreements with partner countries

Analyzing the current policies on social security agreements with partner countries it should be mentioned that presently, we have two (2) international instruments that might be used by the member-states and partner countries in the process of development of their agreements. The first one is the **Model Agreement**[5] issued in 1998, which could be used as model for members of the Council of Europe when negotiating bilateral Agreements.

The second existing instrument is the **European Convention on Social Security**[6] adopted in 1972, which functions as the binding multilateral Agreement for members of the Council of Europe who have ratified this Convention[7]. However, this instrument somewhat does not appeal as much even to those few distinguished countries, given that no new ratifications have been made for so many years; Turkey is the only country outside of the EU which is bound by the Convention. In this regard, it must also be mentioned that this is an instrument, which cannot automatically replace fully-fledged bilateral Agreements, which cover all the traditional branches of social security. In the fields of sickness, unemployment and family benefits, bilateral Agreements are necessary, as the relevant provisions of the European Convention are not self-executing. This might be one of the explanations for why this Convention has been ignored by many countries in the past. Another reason may be its complexity and the nature of its text.

Regarding the **Model Agreement** it also should be noted that even after the fall of the iron curtain, the newly established democratic countries of Eastern and Middle Europe chose not to use this instrument to quickly achieve relations with other countries, but instead prefer to apply the method of **bilateral Agreements,** which seem better suited for the individual purposes of the countries concerned. This is a lesson we should bear in mind when thinking about further strategies for **Georgia**.

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[5] *Model Provisions for a Bilateral Social Security Agreement and Explanatory Report*, available at: http://www.coe.int/t/dg3/sscssr%5CSource%5CModProven.PDF

[6] Available at: http://www.worldlii.org/int/other/COETS/1972/7.html

[7] The following Member States have ratified this Convention and are thus bound by it: Austria, Belgium, Italy, Luxembourg, Netherlands, Portugal and Spain.

Coordination agreements related to common social security arrangements have been in existence for a long time. As long ago as 1907, the Netherlands concluded a bilateral agreement with Germany on the applicability of the Accidents Act, which provided compensation for the loss of income due to disability for work on account of an industrial accident in a company that did dangerous work. One of the main purposes of this agreement was to put an end to double insurance against accidents in both the Netherlands and Germany.

All over the world, bilateral employment contracts began to gain ground in the mid-twentieth century in large rising economies in countries such as the United States, Canada, Australia and in Europe. With these bilateral agreements, countries hoped to be able to make up for the lack of workers on the account of World War II. In Europe, migrant workers were recruited after the World War II to compensate for the acute shortage of workers in industry.

Between 1946 and 1984, slightly over 1.5 million emigrants departed from the Netherlands. About one third migrated to the traditional emigration countries - Canada, Australia, the United States, South Africa, New Zealand and Brazil[8]. At the same time, the Dutch population increased from 9.3 million in 1946 to 14.4 million in 1984[9]. As a result of these migration flows, as early as the 1960s the Netherlands concluded coordination agreements with countries such as Turkey, Morocco, Tunisia, former Yugoslavia and Cape Verde, and has had coordination agreements with traditional emigration countries for a number of years as well. After the Export Restrictions on Benefits Act (BEU) came into force, the Netherlands concluded less comprehensive agreements with many countries, containing only arrangements on the export of benefits and verification of entitlement. There is no standard form for these agreements: broadly speaking, the content is the same for many countries but the way they are formulated is different according to an outcome of the negotiation process between the two agreement partners.

In the 1990s, bilateral coordination agreements became a focus of renewed interest when the number of agreements concluded by the Organisation for Economic Co-operation and Development (OECD) coun-

[8] Franssen, W., (2006): *The role of social security in protecting migrant workers,* International Social Security Association.

[9] http://www.populstat.info/Europe/netherlc.htm

tries increased fivefold. The collapse of the Soviet Union led to a large number of new agreements in Central and Eastern Europe and Central Asia.

Nowadays, most social security agreements are bilateral, involving two countries. However, there are some notable examples of agreements to which many countries are a party. Some of the best practice examples around the world have been mentioned above.

A bilateral agreement is an accord between two states concerning a specific area or sector. The provisions of bilateral agreements are based on the state parties' national policies and should ideally meet the minimum standards inscribed in the international treaties. Compared to a treaty or a covenant that requires broader commitments from the state parties, a bilateral agreement is more specific in scope and application.

Bilateral labor agreements (BLAs) were first used by states of origin and Western European states of employment in the 1960s to regulate temporary labor migration. The importance of bilateral labor agreements for international organizations, governments, migrant workers and worker rights groups is recognized. However, there are challenges in developing and implementing bilateral agreements as shown in the experience of the Philippines that will be presented further in our analysis.

The EU regulations on the coordination of social security systems constitute the most complete and extensive multilateral agreement in existence, applying to all 28 member States of the EU as well as Iceland, Liechtenstein, Norway and Switzerland and covering all nine branches of social security. The agreement also responds to the five objectives of social security agreements and covers all nationals of the participating States, refugees and stateless persons previously covered in the EU, as well as all members of their families and the family members of the deceased breadwinners (survivors). The regulations establish, amongst others, different infrastructures in order to support the administration, implementation and regulation of the agreement. These include the Administrative Commission for the Coordination of Social Security Systems, assisted by a technical Commission for Data Processing and Audit Board and a tripartite Advisory Committee for the Coordination of Social Security Systems.

The scope of the EU regulations on the coordination of social security systems comprises sickness benefits, maternity and equivalent paternity

benefits, old age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits, and family benefits. Moreover, except for some specified schemes, the regulation also applies to both general and special social security schemes, regardless of whether they are contributory or non-contributory, including schemes based on employer liability and some forms of social assistance. This extensive coverage makes the EU regulations the most comprehensive multilateral social security agreement in existence. This is due, certainly to the EU's political and economic context, having a long-term experience in regional policy-making and sufficient administrative resources to draft a clear and applicable strategy as well as the necessary infrastructures for its implementation.

2. Practice of signing social security agreements between EU member states and partner countries; future European approach in light of Georgia's current realities

The principle gap of the EU social security agreement remained in the difficulty of exporting benefits to third states. For example, a non-EU national, when moving to a third State, presumably his or her country of origin, does not have a possibility to have his/her benefits exported. However, according to the decision made by the European parliament on December 13, 2011, non-EU nationals working in member States, party to the EU social security agreement, are entitled to the same coverage as the EU nationals[10]. The directive ensures that non-EU workers will be able to receive their pensions when moving back to their home country under the same conditions and at the same rates as the nationals of the Member State concerned. However, Member States could apply restrictions to workers with contracts of less than 6 months' duration. For non-EU citizens admitted to follow a course of study, family benefits could also be further restricted. Member States will also be able to restrict access to public services, such as public housing, to those foreign workers who have jobs.

Detailed analysis of Member States' Bilateral Agreements on Social Security with Third Countries conducted by the Directorate General for Employment, Social Affairs and Inclusion of the European Commission at the end of 2010[11] has proven the necessity of international-scale approach of the EU social security co-ordination. It means that every strategy, which could be envisaged at European level in this respect, has to build upon existing Agreements concluded by Member States with Third Countries and upon the experiences gained from such Agreements.

According to the opinion of experts, a **European approach** to signing social security agreements between EU member states and partner countries should include the following provisions[12]:

- Co-operation between institutions and authorities, designation of liaison bodies for the harmonious co-operation between the Contracting Countries;

[10] http://ec.europa.eu/justice/criminal/files/directive_2011_99_on_epo_en.pdf

[11] Analysis has been conducted by Bernhard Spiegel

[12] European Commission, (2010): *Analysis of Member States' Bilateral Agreements on Social Security with Third Countries,* p.50

- Official languages which can be used for communication;
- Provision on claims which are made in the other Contracting Country (equal effect and meeting the deadlines);
- Exemptions from fees and from diplomatic or consular legalization, although not all Agreements contain such a provision;
- Medical examinations, in particular to determine the degree of invalidity;
- Transitional provisions concerning events which occurred and periods of insurance completed before the entry into force of the instrument; retroactive effect of claims made within a given period of time after the enactment , recalculation of benefits already determined before the enactment etc.;
- Provision on the enactment and duration of the instrument; regarding the duration, nearly all Agreements have an unlimited duration, only very few Agreements provide for a revision after a special period (e.g. after 3 years). Thus it is recommended to provide an unlimited duration in a European approach;

When thinking of a future European approach, these explanations favour a lighter approach encompassing a text that is easier to understand. Both instruments of the International Labour Organization (ILO) (which have worldwide geographic coverage), namely Convention No. 157 on the maintenance of social security right[13] and Recommendation No. 167[14] on the same topic also represent different module-based bilateral model Agreements.

Experience gained by different countries cannot be directly applied to the model of Georgia due to the various differences between analyzed agreements' texts; however, some fundamental principles, which are included in nearly every text, are presented here. These principles include the following aspects:

- Which branches of social security are covered by the Agreements?
- What groups of persons are covered by the Agreements and what special features are linked to equal treatment?

[13] http://actrav.itcilo.org/actrav-english/telearn/global/ilo/law/iloc157.htm

[14] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312505

- What principles are provided to determine the applicable legislation?
- How are pensions determined under the Agreements?
- Finally, what other important elements (e.g. data protection, rules combating fraud and error) are included in the Agreements?

3. Coordination agreements in practice; experience of the Netherlands and lessons for Georgia

3.1. Procedure

The initiative to conclude an agreement generally comes from a company, enterprise or interest group in one of the countries of the two parties to the agreement. The Ministry of Social Affairs or Foreign Affairs generally begins negotiations and involves in the process those organizations that implement the legislation, which will be the subject of the negotiations.

The substance of the negotiations is mainly determined by the wishes of the parties to the agreement and the target group for which they wish to make the arrangements. An example is the agreement that the Netherlands hopes to conclude with Japan. Social security is well organized in Japan from an administrative point of view. This means that entitlement to survivor's benefits or old age pension is easy to verify. The verification of a child benefit is much more complicated. Child benefit in Japan resembles a form of national assistance and is implemented by the local authorities. This makes it difficult to make sound agreements about how the Netherlands can verify entitlement to Dutch child benefits in Japan. Japan and the Netherlands have not yet reached an agreement on this issue. The coordination agreement as it is currently on the table therefore contains no arrangements in respect of child benefit.

Two periods can be distinguished before a bilateral agreement is ratified. During the first period, one or more rounds of negotiations take place on an official level, resulting in the signing of the agreement by the governments of the parties involved. Sometimes this period is short, but it is not unusual for the process to last for a number of years. The second period lasts from the actual signing of the agreement and until its ratification. During this period, the agreement undergoes a series of procedures prescribed under constitutional law in the agreement countries, concluding with its approval by the national parliament. This period, too, may take from months up to a few years.

3.2. Coordination

One aspect of the coordination of social security between one or more countries is getting the systems of the two countries in line. In the co-

ordination of social security, an important distinction is that between an accrual system and a risk system. One of the factors that determine the rate of a benefit under an accrual system is the number of insured periods a person has accumulated. The more insured periods - higher the benefit. When a person wishes to claim the benefit he/she has built up, the person does not need to be insured. This is not the case in a risk system: it does not matter for how long a person has been insured; what matters is whether he/she is insured at the point when the risk occurs. If the risk does not occur, there is no entitlement to benefit. Whether a particular risk is insured via an accrual system or a risk system varies by country. This can lead to four possible bilateral situations:

- A person has only been insured under an accrual system. If the risk occurs (for instance, if a person retires), then he/she receives a benefit from each of the systems in proportion to the duration of his/her insurance under each one.
- A person has only been insured under risk systems. If the risk occurs, the person receives a benefit from the system under which he/she is currently insured and not from the system under which he/she was insured in the past.
- A person was first insured under an accrual system and later under a risk system. If the risk occurs, he/she is entitled to a partial benefit from the accrual system and a full benefit from the risk system. This is termed *overlapping benefits*. It can be prevented in a coordination agreement by including a provision preventing the overlapping of benefits. Under such a provision, the benefit from the accrual system is deducted from the benefit from the risk system in accordance with the rules set forth in the agreement.
- A person was first insured under a risk system and later under an accrual system. If the risk occurs, he/she is only entitled to a partial benefit from the accrual system. The person cannot derive any rights from the risk system because he/she was not insured under this system when the risk occurred. To avoid this situation, most coordination agreements contain provisions to ensure that the person is entitled to a benefit from the risk system in proportion to the duration of his/her affiliation with this system. This is referred to as *pro rata temporis*.

In addition to the distinction between the accrual and the risk system, another complicating factor is that some countries make a minimum number of insurance periods conditional in order to claim entitlement to a benefit. For instance, Bulgaria and the Czech Republic stipulate a minimum of 15 years of insurance before a person can claim entitlement to a pension from the age of 65. In such a case, it is important that the coordination agreement stipulates that the insurance periods that count towards entitlement may be added up for all countries involved, in determining whether the minimum condition has been satisfied.

3.3. Enforcement

The experience of the Netherlands has demonstrated many times that in practice an enforcement section is not a luxury. One example: in one region of a country, the Social Insurance Bank (*Sociale Verzekeringsbank* (SVB) observed a disproportionate number of births of twins, children for whom the parents were entitled to child benefit. Verification of the administrative records showed that on paper, everything was quite correct: that is to say, the official documents were in order. The SVB started an investigation to ascertain evidence of the physical existence of the twins. As the investigation progressed, many of the twins, or one of the two children, suddenly died. It was not only the verification procedure of the SVB that caused this, but also the imminent call-up for military service, a requirement which non-existent boys would not be able to comply with. The conclusion that can be drawn from this example is that it is not sufficient to verify administrative records, but that sometimes it does not hurt to check whether they are in accordance with reality.

Another example showing the effectiveness of verification procedures is the following: a stricter enforcement and verification policy brought to light that a number of Dutch companies had established their offices in Poland, but only on paper. Thanks to this fiction, their Polish employees who worked for them in the Netherlands were deemed to be seconded from Poland to the Netherlands, whereas these companies in fact did not carry out any economic activities in Poland. By registering their address in Poland, they could reduce the costs of social insurance paid by the employer thanks to the lower contribution rate in Poland. Agreements between the SVB and the competent social insurance authority in that country, Social Insurance Institution (*Zaklad Ubezpieczen Spolecznych*), ended this method.

Verification of marital status (married, single) has proven to be quite difficult in many countries, primarily because it is often not registered. Income details are another difficult sphere to verify, because they are often subject to privacy legislation, which means they may simply not be communicated by the authorities to another country. The matter of income details is often resolved by obtaining the beneficiary's permission to inspect them.

3.4. Coordination agreements and changes in national legislation

Amendment of the national legislation may have unwanted effects on the beneficiaries in one of the signatory states, after an agreement has been concluded. In such a case, either the agreement or the national legislation need to be modified. An example is the new Dutch healthcare insurance act, which took effect on January 1 2006. In countries where medical care is covered under the agreement with the Netherlands, the new system immediately proved to have serious consequences for a certain group of insured persons: persons with a long-term benefit from the Netherlands (such as old age pension, who were not entitled to healthcare in their country of residence and who had previously had private medical insurance coverage. The new act no longer distinguishes between private and public insurance: private medical insurance was abolished under the new act and since January 1, 2006 these people have been subject to the new healthcare system, which they owe contributions for. The agreement between the Netherlands and their country of residence states that because of their ties with the Netherlands, the country in which they formerly worked, persons and their family members who live outside the Netherlands are entitled to medical care in their country of residence according to the standards of that country, and this care is paid for by the Netherlands. Because the Netherlands pays the medical costs, it was agreed that the Netherlands would also collect the contributions. However, reality is, in some countries the contributions due under the new health care insurance act were completely unproportional to the costs of medical care in their country of residence. To resolve this problem, the new healthcare act was adjusted in April 2006 by including a correction factor for each country with which the Netherlands has a coordination agreement; the basic contribution is multiplied by this factor. This factor is based on an average expenditures on health care in that country and

average expenditures on health care in the Netherlands[4]. As a result, the contribution owed by beneficiaries under the agreement in Turkey has reduced considerably because of this amendment. On the other hand, a country of residence factor has increased a contribution for beneficiars from Iceland.

4. Contents of social security agreements and its further development in the context of European approach

4.1. Horizontal provisions to be included into an agreement

In relation to the content of an agreement, two sets of provisions must be mentioned. Firstly, the first part of all Agreements must contain **definitions** of the expressions used in their texts. Usually these definitions are more or less in line with the definitions used in Reg. 883/2004[15], and therefore, these could be used as a model wherever necessary in a European approach.

Secondly, all Agreements contain an explicit **export provision,** which must be included in any future European approach. Furthermore, the corresponding provision under Reg. 883/2004[16] could be used as a model for this provision. In any case, **non-contributory special benefits** are explicitly exempted from an export or from the scope of the Agreement.

Another area of interest is the fact that export provisions are **restricted to the nationals** of the two Contracting Countries under some Agreements. Pensions especially should be dealt with under a European Approach, these export provisions would therefore predominantly concern pensions only.

If the instrument itself is easily readable, then it is usually not possible to settle all imaginable problems related to the specific elements of the legislation of Contracting Countries in the instrument itself. Therefore there is always the possibility to include **Country- specific solutions in an Annex** when concerned with multilateral solutions. Thus in any future European approach there should also be the possibility for such an Annex. It is a general practice that all the Contracting Countries have to agree to the insertions or amendments to such Annex-entries.

[15] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Art. 1, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0883:20120628:EN:PDF

[16] Ibid, Art. 7.

Experts' recommendations for horizontal provisions under a European approach:

Definitions:

The following definitions as contained for example in Art. 1 of Reg. 883/2004 should be included:

- family member (if needed)
- residence (and stay if needed)
- legislation
- competent authority
- institution
- competent institution
- periods of insurance
- pensions or benefits

Export

A provision stipulating an obligation to export benefits in cash (pensions) as contained for example in Art. 7 of Reg. 883/2004 should be included.

Annex

There must at least be an Annex for special provisions for the different Contracting Countries. Additional Annexes (e.g. for special non-exportable non-contributory benefits) have to be examined during the elaboration of the future European approach.

4.2. Material Scope of the Agreements

Social security is usually understood as covering the risks of sickness and maternity, accidents at work and occupational diseases, invalidity, old age or death (benefits for survivors), unemployment and family benefits (for the "risk" of additional burdens due to family members who can-

not support themselves). This list was first established in an important international instrument, namely the ILO Convention No. 102 on social security (minimum standards)[17]. Death grants have sometimes also been added to this list (although these one-time payments generally loose an importance if periodic benefits such as survivors' pensions gain more importance). Therefore it is not astonishing that the European social security coordination instruments also cover these traditional branches or risks[18]. The extension of this list by Reg. 883/2004[19] with the addition of paternity benefits (equivalent to maternity benefits) and pre-retirement benefits does not dramatically enlarge the risks covered.

Therefore, the list of risks as included in the Reg. 1408/71 or Reg. 883/2004 will act as a yardstick against which to measure the scope of the bilateral Agreements analyzed. The details that can be identified in there is a difference between countries in the "neighborhood" and more remote countries. While agreements with European countries usually cover the whole package of social security, agreements with countries on other continents are, as a rule, restricted to old age, invalidity and death (pensions). Nevertheless, there are exemptions which show that some Member States also try (or tried) to achieve fully fledged material scopes in their Agreements with countries on other continents, although covering all branches or risks does not automatically mean that the provisions provided for each of these branches or risks are comparable to the corresponding provisions in Reg. 883/2004. So for example if sickness or unemployment benefits are included, there is sometimes only a provision on aggregation of periods; if accidents at work and occupational diseases are included there may be no provisions on benefits in kind, or if family benefits are included, there may only be a unilaterally applicable provision concerning family benefits for pensioners.

Therefore it would seem to be advisable that as a *first step*, any approach at a European level should concentrate on pensions, as it seems easier to agree on the universally acceptable principles, as Member States, which

[17] Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247

[18] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, Art.4, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1971R1408:20080707:EN:PDF

[19] See footnote 16, Art.3

in the past had covered all the branches, now tend to be more restrictive, and for countries which are far away from each other, these long-term benefits seem to be the most important ones. In case the future European approach should also cover countries which are closer to home (e.g. countries such as successors of former Yugoslavia, or of the former USSR), any extension to other branches of social security has to be made very carefully. In the first place, the extent of the co-ordination under Reg. 883/2004 cannot be transposed to relations with these Third countries, and secondly, an inclusion of all of the different branches would make this approach very complicated from a technical point of view. Thus in the event if such a *second step* and further-reaching approach is planned, this must be done on a very flexible and open basis, allowing the countries which wish to do so, the possibility of choosing from prepared modules. Contracting Country is responsible for granting coverage (protection) and collecting the contributions in respect of the covered schemes (provisions on applicable legislation).

Under the legislation of many countries, coverage and the collection of contributions are not split in accordance with the different branches of social security but are rather combined. For example, in Austria, the health insurance institutions collect contributions for sickness, accidents at work and occupational diseases, pensions and unemployment insurance all together. In such cases, the question always arises of how to proceed if an Agreement only covers for example, pensions, but not the rest of the branches of social security. In practice, it frequently happens that if this country is declared competent under the provisions on applicable legislation in the context of an Agreement covering only pensions, this then results in the collection of all contributions (also for the branches not covered by the Agreement). Sometimes the Agreements explicitly say that; although the provisions on the granting of benefits are restricted to pensions – the Chapter on applicable legislation covers all branches of social security. Thus, it is safeguarded that contributions can always be collected for all branches to reflect the national legislation.

The further we move away from the traditional European understanding of social security, the more we could be confronted with different traditions and models of social security. A good example, which is not so far away from the territory of the EU might be Kosovo where the social security scheme had to be re-established after the separation from Serbia and up until now there has been no sickness insurance scheme based on leg-

islation. Some basic benefits are granted to the local population, but officially, there is no sickness insurance that could be coordinated with other countries. Such situations have to be respected when we think about coordination with such countries. So it could be also useful to re-think the tradition that schemes based for example on collective bargaining are excluded if we may start to deal with countries where such schemes play a predominant role and without their inclusion, we would not cover the reality of social security in those countries**.**

4.3. Experts' recommendations for material scope under a European approach

- It is recommended from a systematic point of view to include a list of abstract risks (like under Reg. 883/2004) and not to list the different benefits covered or the relevant national legislation.
- All schemes for employed and self-employed persons should be included (with the exception of special schemes for civil servants and some special schemes for the self employed – countries could opt for the inclusion of these excluded schemes).
- The schemes covered (or the personal scope) should be restricted to active persons and their family members (exclusion of purely inactive).
- As a first step, only pensions (risk: old age, invalidity and death) should be covered. If the approach concerns European countries [or other countries with a level of integration that is comparable to that of the Member States], as a second step, the other branches of social security could also be included. In this case, a more flexible approach will be necessary, only giving Member States an option to choose the other branches and to exclude special benefits such as long-term care benefits.
- Special non-contributory benefits should be included, but there should be a possibility to exclude these benefits from export. It might be necessary to take a more flexible and more extensive approach on the question of which benefits should be regarded as non-contributory.
- In addition provisions on applicable legislation should be included.
- For Countries, which have a common scheme for coverage and collecting contributions for all branches of social security, the provi-

sions on applicable legislation should be extended to the other branches of social security which are dealt with together under the national scheme.

4.4. Personal Scope and Equal treatment

This concerns the issues of which persons (only nationals or all persons covered/insured) the Agreements should apply to and if – or under what conditions – these persons should be treated equally in Agreements. One could assume that if pensions alone are covered by the European approach, it should not cause so many problems (in the past, other branches of social security, in particular family benefits, have proven to be a problem). So in case of a restricted material scope, an unrestricted equal treatment provision should be proposed.

4.5. Experts' recommendations under a European approach

Personal treatment:

- The application of instruments should not be restricted to the nationals of the Contracting Countries only but should also be applicable to all persons covered by the relevant legislation.
- In addition, members of the family and survivors of such persons should be covered.
- If a Third Country (the position of the EU should always be a non-restricted personal scope) insists on a restricted personal scope, then in addition to nationals, refugees and stateless persons residing on the territory of the Contracting Countries, the family members and survivors of all these persons should also be covered, irrespective of their nationality.

Equal treatment concerning the export to Third Countries:

- The equal treatment clause should cover all persons covered by the Agreement.
- Exemptions from the equal treatment clause (e.g. concerning its application only to the relevant nationals, voluntary insurance open only to the country's own nationals or provisions on additional insurance burdens on the citizens of the Third countries under bilateral Agreements with Third Countries) should not be included in the

European approach itself, but rather in unilateral special provisions, e.g. in the form of an Annex.

- There should be an additional rule extending the equal treatment obligation to the export of benefits to other Third Countries.
- The inclusion of a "Gottardo-clause" is recommended if there is a restriction of the personal scope to the nationals or if other restrictions to these persons exist.

4.6. Applicable legislation

Experts' recommendations under a European approach are based on the harmonization of bilateral agreements with the model of EC Regulation No 883/2004 of the European Parliament and the Council of the European Union on the coordination of social security systems[20].

General principles:

- As the leading principle, the *lex loci laboris* (local legislation on labor) should be established (place where the employed or self-employed activity is exercised) – model Art. 11 (3)(a) of Reg 883/2004.
- By bilateral agreement between the competent authorities or any other designated bodies of countries, exceptions from all the rules of applicable legislation should be possible in individual cases (for example for diplomatic missions, consular posts etc.) – model Art. 16 of Reg. 883/2004.

Posting:

- The posting notion for employed persons should be the same as under Reg. 883/2004 (Art. 12 (1)). To ensure a harmonized interpretation, the content of Decision No. A2 of the Administrative Commission should also be included, as a memorandum of understanding, additional protocol etc.
- The posting period should be, as under Reg. 883/2004, 24 months without a specific possibility of extending this period.
- If a posting provision for the self-employed also has to be included (with the same duration as for employed persons), this rule should

[20] See footnote 13

be limited to the exercise of a self-employed activity (difference to Art. 12 (2) which covers any activity in another Member State).

- A provision should be included for civil servants – model Art. 11 (3) (b) of Reg. 883/2004.

Simultaneous activities and other special cases:

- If a general rule is necessary, it is recommended that it be restricted to self-employed activities – model Art. 13 (2) of Reg. 883/2004.
- For persons working on board of a seafaring vessel, the flag principle should be included.
- For air crews, a special provision is recommended which should follow, e.g. the home base principle – depending also on future discussions concerning Reg. 883/2004.]
- In relation to the (European) Third Countries that are geographically closer to the EU, a special provision on transport workers could also be included – model Art. 14 (2)(a) of Reg. 1408/71.
- For persons employed at Diplomatic Missions and Consular Posts, a special provision should be included – model Art. 16 (1) and (2) of Reg. 1408/71 with additional clarification concerning the relation of this provision to the general rule for civil servants

4.7. Pensions

Experts' recommendations under a European approach are based on the harmonization of bilateral agreements with the model of EC Regulation No 883/2004 of the European Parliament and the Council of the European Union on the coordination of social security systems[21].

Definitions:

- A definition for "periods of insurance" should be included – model Art. 1 (t) of Reg. 883/2004.
- Also a definition for "pension" or "benefit" should be included – model Art. 1 (w) of Reg. 883/2004.

[21] See footnote 13

Principles:

- There should only be provisions for all Contracting Countries and not too many unilateral special provisions. However, taking into account the great difference between the pension systems of the Member States, an Annex for such concrete and detailed national provisions seems to be inevitable.

Aggregation of periods for entitlement to a pension:

- Aggregation of all periods should be conducted for an entitlement to pension, and in addition, specific provisions should be included for special schemes, or special rules for special professions or occupations, and a clause under which insurance or receipt of benefits under the legislation of another Contracting Country are treated equally for entitlement – model Art. 6 and 51 of Reg. 883/2004.
- An additional provision should be included, which extends the principle of aggregation of periods to Third Countries with which the Contracting Country concerned is bound by another Agreement or by Reg. 1408/71 or 883/2004.
- In addition Reg. 883/2004 should also be amended correspondingly to oblige a Member State to aggregate not only periods in other Member States but also periods in a Third Country with which that Member State has concluded a bilateral Agreement under this Regulation.

Calculation of the pension:

- A copy of all the different steps for calculation under Reg. 883/2004 would seem to be too heavy for a future European approach.
- As a lighter model, the following principles could be applied: calculation under national legislation if aggregation is not necessary, and a pro-rata calculation only for those cases where aggregation is needed. Special provisions should be added to take into account the special circumstances related to the funded schemes, pension accounts and pension point schemes.
- A provision for periods of less than 12 months should also be included; it has to be decided if such periods should be taken over by the other Contracting Countries as under Reg. 883/2004, or if they should be regarded as lost.
- If an anti-overlapping provision is necessary**, -** it should be kept as

simple as possible (e.g. assimilation of benefits and income received under the legislation of the other Contracting Country).

4.8. Other provisions

Experts' recommendations under a European approach

General rules:

- Rules on co-operation, the use of languages, claims in the other Contracting Country, exemption from fees and authentication, medical examinations, transitional and entry into force rules.
- Other general rules such as, for example, offsetting, recovery and those on damages, should first be further analyzed before they are included in a European approach.

Data protection:

- A basic data protection provision must be included; it should be further examined if additional elements of data protection could also be included in that provision.

Fight against fraud and error:

- Special provisions to combat fraud and error should be included, which cover at least determination of residence and assessment of income; in addition more rules like e.g. those contained in the Dutch Model Agreements should be considered.

Dispute settlement and Mixed Committee:

- A concrete mechanism of dialogue between the competent authorities for dispute settlement should be included.
- In addition, a Mixed Committee should be established, having interpretative power and also tasked to prepare amendments to the instrument.

5. Best practice examples and challenges based on experience of other countries in light of perspectives for Georgia

For our analysis presented below we have chosen 2 countries: Hungary and Philippines. Philippines were chosen because of the country's migration profile that seems to be very similar to that in Georgia: the comparatively recent evidence of temporary migration abroad for labour purposes reflects huge numbers (more than 8 million Filipinos or 8.5% of its recent population spread across 214 countries around the world[22]), including plenty of undocumented migrants. Aside of it, the Philippine government is seen by other countries as a pioneer in negotiating bilateral labor agreements.

Hungary has been chosen as a new member-state of European Union, which experience in development of social security agreements harmonized with European practice after enlargement of EU borders might be useful for Georgia.

5.1. Philippines

Philippines does not have bilateral agreements (BLA) with all countries and territories where Filipino migrant workers reside. As of 2010, the Philippine government had signed 49 bilateral labor agreements with 25 countries and territories. Not all of these BLAs however, are in force.

Agreements with European countries are more focused. For instance, the agreement with the United Kingdom aims to address the shortage of health professionals including the promotion of employment opportunities for Filipino health workers in this country.

Overseas Employment Administration uses two model BLAs. The first is the Memorandum of Understanding (MOU), like Philippine MOU with Western Canada, which includes provisions on the exchange of labor market information, procedures for recruitment and selection of workers, setting minimum employment standards, mandatory orientation for workers, protection of workers, formation of a joint consultative committee, and a mechanism for mutual development of human resources. The second is a Memorandum of Agreement (MOA), as the Philippine-

[22] International Organization for Migration (IOM), (2013): *Country Migration Report: The Philippine, IOM*

Bahrain MOA in which the government of Bahrain committed to grant graduate and post-graduate scholarships to Filipino health workers on-site, with the condition that they will work in government hospitals, universities and other institutions upon reintegration in the Philippines. From the perspective of the Philippine government, a Memorandum of Understanding (MOU) and a Memorandum of Agreement (MOA) bear the same meaning.

5.1.1. Process of Negotiating a Bilateral Labor Agreement

The process of negotiating a BLA involves many stakeholders. It includes the following steps.

1. The state of origin or state of employment expresses its intention to establish a bilateral labor agreement. Ideally, the intention should be aimed towards a commitment to ensure that labor migration in both countries are regulated, that national policies and international norms are implemented, and the rights of workers are protected. The governments of the state of origin and state of employment inform the appropriate embassies of its intent.

The state of employment may decide to initiate a bilateral labor agreement in the following circumstances: when it needs to hire workers in specific sectors; a labor ban imposed by the state of origin affects the human resources of the state of employment; or the state of employment has to address illegal recruitment practices. The Philippines, as a state of origin, communicates its intention to form an agreement when there are employment prospects for Filipinos; the Philippines sees an inconsistency between its labor migration regulations and the policies of the state of employment, thus creating roadblocks for deployment; or the welfare of migrant workers is not being addressed.

2. The Department of Foreign Affairs writes to the Department of Labor and Employment, which is the main implementing agency of labor agreements in the Philippines, to draft agreements with the assistance of focal implementing agencies such as the Philippine Overseas Employment Administration, Department of Health, and Bureau of Immigration.

3. Negotiations of bilateral labor agreements are conducted by technical panels of government officials from the implementing agencies of both countries. The implementing agency of the Philippines, for instance, the

Philippine Overseas Employment Administration, holds consultative meetings with relevant stakeholders to gather input and recommendations in preparation for the negotiation with the state of employment. However, in many cases, there is no participation from the civil society organizations or the implementing agency fails to inform and request their participation even though the Magna Carta of Migrant Workers and Overseas Filipinos affirmed the partnership between the state and civil society organizations in protecting the rights and welfare of Filipino migrant workers.

4. The Office of Legal Affairs of the Department of Foreign Affairs oversees the treaty writing process. It reviews the form and content of the agreements drafted and submitted by the implementing agencies. When writing bilateral agreements, implementing agencies do not use a template and largely base their drafts on past or existing agreements. Once the Office of Legal Affairs approves the agreement, it will submit the draft to the respective geographical unit in the Department of Foreign Affairs (for example, ASEAN Affairs, Office of European Affairs) and then to the embassies and Philippine Overseas Labor Offices. Revisions will be made by the implementing agencies and fine-tuned by the Office of Legal Affairs.

5. Implementation and monitoring of bilateral labor agreements are assigned to joint commissions where contracting parties agree to establish commissions, working groups or technical panels composed of representatives from each party for the purpose of implementing and coordinating all aspects of the agreements. The contracting parties agree that the joint commissions should meet on a specified period, ideally every year, to create implementing guidelines of the agreement, assess the progress and effectiveness of the labor agreements and modify the terms if deemed necessary.

Challenges in Developing, Negotiating, Implementing and Monitoring a Bilateral Labor Agreement

Negotiating a bilateral labor agreement, whether in the form of an MOU or an MOA, is a difficult undertaking. Hence, in almost four decades of labor migration, the Philippines has made BLAs/ MOUs/ MOAs with only 79 states of employment (including those for seafarers) despite the presence of OFWs and Filipinos overseas in more than 214 countries and

territories. The effectiveness of these bilateral mechanisms depends on how well they are implemented and enforced by the contracting countries. In addition, there are challenges in the development, negotiations, implementation, and monitoring of bilateral labor agreements:

5.1.2. Few bilateral labor agreements with states of employment of Filipinos

The Philippines does not have bilateral labor agreements with all of the countries and territories where Filipino migrant workers are present. Among the most common arguments raised by states of employment for their reluctance, if not outright refusal, to enter into any formal agreement is that foreign workers are subject to the same laws and regulations as nationals; consequently, they do not need any special attention. Moreover, since the workers and private employers or agencies negotiate the terms of employment, government intervention is not necessary since it is a private and personal matter. Some states of employment decided not to negotiate bilateral labor agreements with the Philippines because it might serve as a precedent. Others stated that the number of OFWs in their countries is not yet significant to merit a BLA as in the case of OFWs in Thailand. Some countries may also abandon negotiations with the Philippines if the latter's requirements are more stringent compared to agreements with other states of origin. Or the states of employment prefer other forms as for example regarding the Gulf States, where Asian sending countries (like the Philippines) have generally managed to achieve framework agreements, or statements of mutual cooperation, concerning recruitment and protection of workers rather than specific bilateral labor agreements.

Lack of binding agreements:

The legal status of BLAs is unclear on whether these agreements are treaties and if they are binding. Philippine officials normally prefer a Memorandum of Understanding or statements of mutual cooperation on recruitment, which do not require ratification. According to the Philippine government, although bilateral labor agreements have proven to be effective in addressing issues and concerns affecting the employment of workers, it takes a long time for these agreements to be developed and implemented. In recent years, the Philippines has veered away from the

formulation of general agreements. It has worked towards the adoption of more focused and specific agreements, which are easier to negotiate and operationalize. Advocates believe that MOUs and statements of mutual cooperation are useful as long as they serve as roadmaps to more formal binding agreements that will protect the rights of migrant workers.

Lack of participation of stakeholders:

Although the 1987 Constitution, Magna Carta for Migrant Workers and Overseas Filipinos, and the Civil Service Code recognize people's organizations and non-governmental organizations as partners in development, they are not being consulted with during the drafting of bilateral labor agreements. The existing process also allows for the participation of migrant workers and advocates but it is not being implemented fully. Most agreements mentioned the role of implementing agencies but did not include other stakeholders.

Non-recognition of the feminization of labor migration:

Majority of Filipino women migrant workers are employed as housekeepers, which make them vulnerable to discrimination, violence and exploitation. Domestic workers are often excluded from the protection of labor and social legislation, rendering their contract of employment meaningless in the absence of grievance mechanisms, support services, and a worker-friendly environment.

Lack of monitoring and implementation mechanisms and procedures:

Implementation and monitoring of bilateral labor agreements and MOUs is almost non-existent. Regardless of whether they are binding labor agreements or memorandum of mutual understanding for cooperation between states of origin and employment, mechanisms that will enforce what has been agreed upon in writing, must be implemented in practice. Almost all the agreements and MOUs that have been reviewed mentioned a Joint Committee that will operationalize the provisions and develop implementing guidelines. To the knowledge of one negotiator, no such joint committee meetings have been conducted so far. The Joint Committee meetings were intended to provide a forum where both countries could assess the implementation of the labor agreements' provisions and

consider any further adjustments to the agreement itself. Without such meetings, there is no formal mechanism to ensure that the states of origin and states of employment follow the guidelines to which they agreed.

Lack of competence of the government agencies' civil servants

Presently, the Office of Legal Affairs in the Department of Foreign Affairs employs five staff persons who review all the treaties and agreements entered into by the Philippines with all countries. There is limited staff capacity to thoroughly review and analyze bilateral labor agreements, which could result in important provisions being overlooked such as those, which would protect and promote the rights of migrant workers.

Inaccessibility of documents:

There is no central repository for the exchange of notes, minutes of consultations, meetings, drafts and implementation guidelines related to the bilateral labor agreements. Documents are dispersed among various implementing agencies. Many of the documents could not be found in the Department's offices. The Philippine Overseas Employment Administration created a section on labor agreements on its website and posted seven agreements. However, the exchange of notes, minutes of consultations and meetings, drafts and implementation guidelines, which are essential to review and revise the agreements, cannot be found.

5.2. Process of negotiating a Social Security Agreement in practice

The Philippine government, as a state of origin, has always initiated the process of negotiating for an SSA with states of employment, except in the case of Switzerland, which was proactive in requesting for exploratory discussions. The Philippine government and the Social Security System (SSS) have prioritized the signing the SSAs to decrease the number oversees workers who are not covered by social security.

Negotiating an SSA involves the following process.

1. Before the Philippines decides to enter into a social security agreement with a state of employment, the implementing agencies associated

with the initiation of the agreement must determine whether that specific state is an appropriate target for conducting an SSA. Initially, the Social Security System studies the social security legislation of the prospective state. Statistics from the Department of Foreign Affairs are taken into account in order to decide which states to approach. The private sector can also provide data on the number of migrants and contract workers in a particular state and the views held by migrants in relation to the proposed SSA. In order for a state to be targeted by the Department of Foreign Affairs (DFA) for an SSA negotiation it must have at least 3,000 OFWs. The DFA analyzes the social security needs of migrants through informal consultations.

2. The DFA verifies a state's ratification of the ILO conventions concerning the equality of treatment of migrant workers. The Philippine Government can remind the state of employment that negotiating an SSA aligns its social security policies with the ILO conventions they have signed. A list of countries that have signed these conventions may be used to determine which countries to approach for the negotiation of an SSA.

3. The SSS studies the social security legislation of the state of employment to determine whether coordination with its social security system is feasible. When both systems are found to be compatible, the SSS requests the Department of Foreign Affairs to direct the on-site Philippine Embassy to officially communicate to the government of the state of employment about the Philippine government's desire to enter into an SSA. In some instances, migrant workers have suggested the negotiation of an SSA. Migrant Filipinos in Denmark and Greece have requested the Philippine government to initiate SSA negotiations with their states of employment. A draft SSA with Greece is currently under negotiations.

4. Upon favorable reception by the state of employment, preliminary discussions are held in which both countries exchange information on their respective social security programs. On this basis, a draft of the agreement that will serve as a starting point for negotiations is prepared by either of the parties involved.

5. In the Philippines, the draft is submitted to the SSS, which then forwards it to the concerned geographic office within the DFA. The geographic office then considers the implications of the policy and decides whether it is beneficial for the Philippines to enter into an agreement. Once the decision to conclude an SSA is made, the Department of Foreign

Affairs enters into inter-agency consultations on the working draft(s). Government agencies and offices, including the Office of Legal Affairs and Philippine Overseas Employment Administration, are invited to provide feedback and recommendations. The Office of Legal Affairs' role in this process is to ensure that the agreement is in line with domestic and international laws, and consistent with the international agreements signed and ratified by the Philippines. Once the Office of Legal Affairs has approved the agreement, the geographic office forwards it to the foreign representatives abroad to begin formal negotiations of the agreement.

6. Negotiations of bilateral social security agreements are conducted by technical panels of government officials from the implementing agencies of both countries. For the Philippines, the SSS and Government Service Insurance System (GSIS) are the main implementing agencies.

7. Once negotiations are concluded, the agreement is finalized and signed. The competent authority, which is mandated to sign the agreement, is usually "the head of state, head of government or minister of foreign affairs." The agreement then enters into the process of fine-tuning to meet the legal requirements of both countries for the agreement to enter into force. For the Philippines, the agreement is first ratified by the President and then forwarded to the Senate for concurrent ratification. When these processes are completed, instruments of ratification are exchanged and the agreement enters into force on a date specified within the agreement itself.

8. The framework for the legal implementation of the SSA is provided within a subsidiary instrument known as the administrative arrangement. Administrative arrangements are legal contracts between the social security authorities and institutions involved in the implementation and maintenance of the SSA. The administrative agreements also outline how these agencies will work together to implement the SSA and the corresponding legislation. Additionally, the administrative arrangement designates liaison agencies in charge of the implementation of the agreement for each country. For the Philippines, the designated liaison office for all SSAs is the International Affairs and Branch Expansion Division of the SSS, which is tasked to jointly monitor the number of claims processed and benefits paid, together with its foreign counterpart.

6. Challenges in developing, negotiating, implementing and monitoring Social Security Agreements

Different eligibility criteria to access social security benefits

Differences in social security systems are major barriers to negotiating SSAs. These differences include gender disparities in the qualifying age for retirement benefits. In the Philippines, the SSS grants contribution-based pension to a person above 60 years old who has accumulated membership payments for a minimum of 120 months. Belgium's eligibility and entitlement to a retirement pension requires contributions for men until age 45 and age 44 for women. The gender difference in eligibility rules for retirement pension was also noted in Switzerland, where continuous yearly contributions from age 21 until age 65 was required of men and until age 64 for women, respectively. In France, the qualifying criteria for retirement pension benefits are 160 quarters or 12.5 years of contributions, irrespective of sex.

Migrant workers' rights to social security are not recognized or prioritized in some countries

The Philippine government's experience shows that states of origin find it difficult to cooperate in negotiating an SSA because the flow of migrants is not reciprocal. It is also difficult for the Philippines to begin negotiations on a social security agreement with a country that is lacking a comprehensive social security system for their own workers or does not recognize the importance of extending social security to migrant workers. The national legal framework on the protection of rights of migrant workers of a state of employment that has not signed any of the ILO conventions may be inadequate, undeveloped, or averse to migrants' rights. When a country has signed ILO conventions which assure equality of treatment to migrant workers, the initiating agency is able to reference these conventions in order to apply political pressure on the government of the country in question to honor these conventions and formally extend social security coverage to Filipino migrant workers.

States of employment see few advantages in establishing an SSA compared to the costs that they would incur. The success of pursuing an SSA highly depends on the state of employment's goodwill and resolve to protect migrant rights. In order to extend social security to migrant

workers, the Philippines established foreign offices in the Middle East to cover Filipino migrant workers under Philippine social security legislation. Moreover, the Social Security System, with assistance from the Department of Labor and Employment and Department of Foreign Affairs, is currently working to systematize voluntary social security coverage of OFWs. Filipinos who are recruited and deployed legally can contribute monthly remittances to foreign banks or remittance centers that grant workers the benefits and privileges of voluntary Social Security System membership. However, this service is open only to properly documented OFWs, again excluding undocumented migrants.

In other countries, there is recognition of migrant workers' rights but application is confined to skilled workers, leaving the low-skilled workers (most of whom are women) to fend for themselves. With the notable exception of Hongkong, many states of employment like Singapore, the UAE, Saudi Arabia and Malaysia do not recognize domestic work as work under their labor and social laws. This gap highlights the lack of protection of migrants in the low-skilled workers' category.

Limited social security benefits

A review of existing Philippine social security agreements reveal variations on the adequacy of social security benefits that are guaranteed and the exclusion of some migrant groups from accessing such benefits. A majority of the social security agreements were in compliance with the guidelines set by the ILO and met the minimum standards of an SSA: equality of treatment, provision of benefits abroad, determination of the applicable legislation, maintenance of rights in course of acquisition, and administrative assistance. An exception is the executive agreement on social security with the government of Netherlands, which outlines the guidelines for administrative cooperation and assistance in validating documents, monitoring and verifying Dutch pensioners residing in the Philippines and SSS pensioners in the Netherlands, but does not meet the minimum standards of an SSA. Another exception is the draft agreement with Israel, which is limited only to hospitalization, maternity and family benefits, and work injury insurance.

Exclusion of seafarers, self-employed and undocumented migrants

Some SSAs do not mention anything on social security coverage of specific migrant groups, namely seafarers, self-employed migrants and undocumented migrants. The SSA with Austria, the Netherlands, and the United Kingdom do not include provisions relating to seafarers, while those with Austria, Belgium, France and the Netherlands do not have provisions to protect the right of self-employed migrants. The applicability of SSAs is limited to migrant workers who are categorized as 'documented'. An undocumented worker is excluded from claiming the rights and entitlements guaranteed in the SSAs by the Philippines with states of employment. However, undocumented migrant workers are the most vulnerable and in most need of assistance among migrant groups. It was for this reason that the UN Convention on the Rights of All Migrant Workers and their Families bound treaty parties to ensure the rights of workers, regardless of immigration status. However, states of employment maintain their immigration laws and assert that the regulation is a necessary pre-requisite for the inclusion of undocumented migrant workers in their social security system.

Lack of gender perspective in accessing social security benefits

As the global economy expands and increases the labor markets' demand for female migrant laborers, the conditions for abuse, sexualized violence, and exploitation is also amplified. Women engaged in the process of labor migration are leaving their country, their homes, and their children, and as a result are breaking away from traditional gender roles. Female migrants are also leaving behind their access to the protection provided by their families, social networks and the legal protection offered by their state of origin. The feminization of labor migration makes it imperative to have a gendered analysis that accounts for the varied experiences and specific needs of women involved in labor migration, including the drafting of social security agreements with specific provisions promoting gender equality. The specific needs of women migrants remain understudied and unaddressed by existing SSAs including the voluntary membership to the Philippines' SSS. None of the SSAs reviewed mention anything on social security concerns specific to migrant women, such as their low capacity to make savings to accumulate a sufficient retirement fund. Most women migrant workers need old-age, disability, parental and emergency social security benefits because of poor

capacity to make savings due to their low incomes as unskilled workers. There exists a significant gender wage gap between Filipino male and female migrant workers; hence, the advocacy for migrant domestic workers to be covered by minimum wage laws of the states of employment.

Low level of awareness about social security among migrant workers

Migrant workers' low level of awareness about social security weakens potential support for SSA advocacy and their utilization. In the Philippines, only 28 per cent of the labor force is covered by the SSS, indicating that experience with social security membership prior to working abroad is also low among OFWs. Despite a voluntary membership program that was opened for OFWs, intake has been slow and in 2006, it was estimated that between 3.4 and 3.9 million Filipino migrant workers were still not covered by PhilHealth or the SSS. Information campaigns undertaken by these agencies have yet to produce the desired results. The low level of awareness affects the demand and utilization of this mechanism, even when they are already made more accessible by SSAs.

Uneven utilization of benefits

In terms of the sheer number of benefits granted by a labor-receiving country through an SSA, the agreements with Canada may yet be the most successful. According to the SSS, the number of benefit claims granted (3,650) within the same time reveals an efficient and accessible system for filing of claims through the SSS liaison agencies.

In the case of agreements with insignificant numbers of processed claims, such as Belgium, France, and Switzerland, these statistics correctly reflect the low concentration of qualified Filipino migrants in these areas. These statistics also indicate the more restrictive eligibility and entitlement requirements to avail of benefits in these countries. In the case of Belgium, eligibility and entitlement to a retirement pension requires 45 and 44 years of contributions for men and women, respectively, to qualify for a retirement pension. For France, the qualifying period for retirement benefits is 160 quarters or 12.5 years of contributions. For Switzerland, it requires continuous yearly contributions from age 21 until age 65 and 64, for men and women, respectively.

Lack of specific data and documentation on utilization of benefits

An analysis of migrant worker utilization of social security benefits over time needs to be undertaken including the impact on migrants by profession, income, sex, destination country, and other socio-economic factors.

Lack of clear guidelines and mechanisms for stakeholder participation in SSA negotiations

Efforts by the Philippine government to include migrant groups and civil society organizations in consultations were noted. However, the process and adequacy of mechanisms for eliciting multi-stakeholder input are areas that need improvement. Stakeholder participation is essential in confirming appropriateness of the SSA to address the needs of migrants, and without migrants' support, an SSA cannot be successfully implemented. For example, the SSA that was negotiated with the government of South Korea faced opposition from Filipino migrants who said they were not consulted on the agreement that would negatively impact their claim to the Lump Sum retirement benefit in the South Korean social security system. In September 2008, the Filipino Employment Permit System (EPS) Workers Association and other Filipino organizations in South Korea launched a signature campaign and sent a petition letter to Filipino senators asking them to defer ratification of the SSA with South Korea. The migrant workers expressed their preference to remain under the Korean pension system, and considered the SSA provision on mandatory membership to the SSS as disempowering. The SSA has not yet been ratified because of the resistance from migrant workers.

Lack of staff capacity in government agencies

The Department of Foreign Affairs (DFA) has limited capacity to implement its functions. It has only one employee for every 60,000 migrants abroad. The DFA's Office of Legal Affairs, which has a major role in the negotiation of the agreement, has a very limited number of full time staff. Recently, the Philippine government approved additional 500 staff members in the Department of Foreign Affairs, but this is expected to only partially meet the existing need.

Lengthy Process

Another problem with social security agreements is the amount of time required from the initiation of negotiations up to implementation. The minimum amount of time required to complete this process is a year and a half. A considerably longer period is often needed, especially when one of the countries involved has had minimal experience in negotiating social security agreements because the first SSA that a country negotiates sets a precedent for succeeding agreements. In 2004, discussions on negotiating SSAs were initiated with Cyprus, Denmark, Germany, Greece, Israel, Italy, Libya, the United States, and Sweden. Some six years later none of these negotiations have resulted in an SSA. Not all SSA negotiations reach a positive conclusion. For example, the Philippines and Italy began talks more than 20 years ago but the government of Italy withdrew for several reasons. The political, legal and financial support, which existed at the beginning of the negotiations eroded through the years. With the global economic crisis, the Italian government became concerned about the affordability of paying retirement benefits to a large number of Filipino migrant workers. Italy's migrant workforce is comprised of laborers from many states of origin and providing social security benefits to one group of laborers may lead to other groups demanding the same, which the government of Italy is unprepared to satisfy. In addition, Italian employers were aware that the Philippines is not the only state of origin and they could always find migrants from other countries who would be willing to work without any social security benefits.

7. **Recommendations**

Pursue adoption of SSAs, which include the ILO provisions.

These provisions include (1) the equality of treatment, which allows migrants the same entitlement to benefits as nationals, (2) the provision of benefits abroad, which allows benefits to be paid to the worker's country of residence, (3) the determination of the applicable legislation, which consists of rules to determine which country's system will apply to the migrant worker, (4) the maintenance of rights in the course of acquisition that allows periods of membership in both countries to be combined to determine eligibility for benefits, and (5) administrative assistance, a provision which guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provisions of the agreement.

Pursue adoption of regional social security standards for migrants.

Create the region-specific model provisions for bilateral social security agreements that countries within the ASEAN region are able to use as a framework in the creating their own social security agreements, both regionally and globally.

The model provisions created by the Council of Europe may be one of the reasons why the Philippines has many agreements with European countries, and why these agreements encompass the SSA objectives recommended by the ILO. There are already several model provisions for social security, such as those created by the ILO. However, the development of region-specific provisions would have several advantages, as suggested by the ILO's 2008 report on the development of the Association of Southeast Asian Nations' (ASEAN) social security entitled "Strengthening Social Protection to ASEAN Migrant Workers through Social Security Agreements." Developing a region-specific model would allow for the agreement to encompass issues that are relevant to the ASEAN community, encourage the creation of structurally similar agreements within the region, and the exercise itself would provide social security officials within the region with hands-on knowledge specific to the drafting of social security agreements.

Incorporate social security provisions in bilateral labor agreements.

In the event that it is impossible to negotiate a social security agreement, social security provisions should be incorporated in bilateral labor agreements; this may be the preferable option for a state of employment that is hesitant to commit to all of the provisions in a social security agreement. Bilateral labor agreements could include provisions pertaining to contract workers and seafarers to ensure state of origin coverage or coverage under the SSS to enable these workers to accumulate creditable periods to qualify for benefits. Qatar is an example of a country that has recently agreed to a bilateral labor agreement, which includes social security benefits for migrant workers. The 2008 agreement entitled "Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar" amends the original agreement, signed in March of 1997. The additional protocol includes a model contract which incorporates "Medical Care and Social Welfare" that specifies the employer's obligation to provide medical treatment and compensation for work-related accidents. This agreement could lead to future SSA negotiations.

Deepen gender analysis in SSA preparation and in monitoring its impact.

Promote gender equality in social security agreements by responding to specific needs of women, which are identified through gender analysis. In monitoring and evaluating SSA implementation, it is imperative to establish mechanisms for the collection and analysis of sex-disaggregated data.

Promote social security for undocumented migrants.

Social security of migrants, regardless of their immigration status, should be promoted. The government of the Philippines is reminded to exercise due diligence in negotiating SSA provisions for undocumented workers and their families.

*Ensure stakeholder participation in the SSA process***.**

Migrant workers should be able to participate in the development, negotiations, implementation and monitoring of agreements. Government agency collaboration with the private sector, civil society and stakehold-

ers' groups is essential. It would be helpful for the DFA to draft guidelines for participation of stakeholder groups in the SSA process based on principles of transparency and accountability. Mechanisms should be developed or re-evaluated that would allow for full participation of migrant workers and civil society organizations.

Increase informational activities on social security.

Low level of awareness and appreciation of social security benefits can be addressed by an information-educational drive that aims to increase voluntary membership of migrant workers in the SSS. At the same time, migrant workers must be provided with clear instructions on how to access social security benefit claims when and if they are available. When SSAs exist between countries, OFWs need to be informed during predeparture orientation seminars on how they may access these benefits.

Educate the public about the contributions of migrants to the states of employment.

To gain support of the states of employment and their citizens on the rights of migrants to social security, the government of the Philippines, especially through its on-site diplomatic missions, must seek to promote the role of OFWs in the host country at every opportunity. An information campaign on the value of migrant workers could help establish a positive public opinion of migrants and a receptive government that facilitates the conclusion of SSAs.

Mandate an inter-agency mechanism to monitor SSA preparation and implementation.

Poor communication between government departments and between government and non-governmental organizations is a major barrier in the provision of adequate support to migrant workers. The development of a committee composed of officials from a wide variety of agencies would be essential in developing long-term strategies to address the root causes of issues related to migrant workers. The Consultative Council on OFWs, an inter-agency committee first organized in 2004 under the auspices of the Department of Labor and Employment is composed of non-governmental organizations and secretary-level government officials who meet on the bi-monthly basis to provide feedback to the government

on issues related to migrant workers. This inter-agency mechanism may be used to develop SSAs and track their implementation. A barrier to the effectiveness of the Council is that attendance is not obligatory. Government officials may choose not

to attend or may send lower ranking government who may have little knowledge of migrant issues or may not have the decision making authority. The Consultative Council on OFWs should be evaluated to see if it can provide the space for government representatives and other stakeholders to discuss the concerns of migrant workers.

8. **Hungary**

Over the last decades, Hungary concluded bilateral social policy and social security agreements with several countries, a number of which has been replaced by the application of the EU coordination regulations, because Hungary has been a member of the EU and EEA since May 1, 2004. From the date of accession, the bilateral social policy and social security agreements Hungary had concluded in the past with Member States and countries that joined the EU along with Hungary (special Hungarian-German, Hungarian-Dutch, Hungarian-Austrian, Hungarian-Polish, Hungarian-Czechoslovakian bilateral agreements and, in respect of Slovenia, the Hungarian-Yugoslavian agreement) have been replaced by the coordination regulations of the Community.

Agreements presented below are currently applicable for Hungary:

- Canadian-Hungarian Agreement on social security (LXIX Act of 2003)
- Croatian-Hungarian Agreement on social security (CXXV Act of 2005)
- Dutch-Hungarian Agreement on social security (VII Act of 2002)
- Quebec-Hungarian Agreement on social security (XVII Act of 2006)
- Korean-Hungarian Agreement on social security (LXXIX Act of 2006)

Hungary has negotiated bilateral social security agreements to enhance the cooperation between the social security authorities of the other countries involved and to ensure the adequate portability of contributions and entitlements for migrant workers and their families. Nevertheless, not all bilateral social security agreements cover all benefits, so the degree of portability may vary. Most agreements refer to long-term benefits like old-age, disability, survivor pensions, and other annuities. The provisions ensure that periods of contribution to these pensions that have been paid in either of the two states are totalized and payment of pensions can be obtained in either country.

The most bilateral social security agreements include the so-called non-discrimination clause. This means that nationals of the signatory states of the agreement are treated equally in the two countries with respect to social law. Since nationals of migrant – receiving countries can easily enjoy their pension, while residing in any other country in the world without suffering any reduction in their pensions, any national of a country with which an agreement has been concluded, enjoys the same right.

Finally, none of the current bilateral social security agreements envision an export of pensions by a transfer of contributions between the social security institutions of the home and the host country. In fact, the agreements specifically aim at avoiding such transfers. Instead, all pensions are paid directly from the various social security institutions to the migrant. The aim of bilateral social security agreements — and in case of the EU, multilateral agreements — is to coordinate national social security law, not to create any form of supranational social security system.

For pension benefits, the key element for portability is totalization of contribution periods and amounts in order to avoid disadvantages in eligibility and replacement rate. Such bilateral negotiations are likely to be difficult, in particular if the benefit systems between Hungary and other countries are very different.

The content of agreement and the condition of different benefits in Canadian-Hungarian Agreement on social security is described below in a more elaborated manner as an example. All other agreements work on a similar principle.

Material scope:

a. Old age security

b. Retirement

c. Survivor's benefit

d. Surviving Child's benefit

e. Death benefit

Personal scope:

This Agreement shall apply to: *a)* Any person who is or who has been subject to the legislation of one or both of the Contracting Parties, and *b)* Other persons to the extent they derive rights under the applicable legislation from persons described in sub-paragraph *a)*.

Minimum period to be totalized:

Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Contracting Party is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation

of that Contracting Party, the competent institution of that Contracting Party shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.

Benefits under the legislation of Canada:

The competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or an allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.

a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under that Plan;

b) the flat-rate portion of the benefit shall be determined by multiplying:

- the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the Canada Pension Plan by
- The fraction, which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under that Plan to establish eligibility for that benefit, but in no case shall that fraction exceed the value of one.

Benefits under the legislation of the Republic of Hungary

The competent institution of the Republic of Hungary:

a) shall calculate the theoretical amount of the benefit which would be paid if the totalized creditable periods accumulated under the legislation of both Contracting Parties had been accumulated under the legislation of the Republic of Hungary alone; and

b) On the basis of the theoretical amount calculated in accordance with sub-paragraph a), shall determine the actual amount of benefit payable by applying the ratio of the length of the creditable periods accumulated under the legislation of the Republic of Hungary to the total creditable periods accumulated under the legislation of both Contracting Parties.

Payment of Benefits

1. The competent institution of a Contracting Party shall discharge its obligations under this Agreement in the currency of that Contracting Party.

2. Benefits shall be paid to beneficiaries free from any deduction for administrative expenses that may be incurred in paying the benefits.

3. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittances or transfers of funds or financial instruments to persons who are outside its territory, that Contracting Party shall, without delay, take suitable measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article **III** who reside in the territory of the other Contracting Party.

Claiming pension

If the person resides in Hungary and wishes to apply for benefit, he/she must complete an application form. The form is available on the website (Human Resources Development Canada) and in the social security office.

1. The Old Age Security Pension

The person may qualify for an Old Age Security Pension if he/she

- has reached age of 65, and
- was a Canadian citizen or legal resident of Canada at the time of his/her departure; and
- Has resided in Canada since reaching age of 18 and has creditable periods under the legislation of Hungary, a total of at least 20 years.

2. Canada Pension Plan Retirement pension

The person may qualify for a Canada Pension Plan Retirement pension if he/she

- has contributed to Canada Pension Plan anytime since the start of the Plan in 1966; and
- if the person has reached the age 60 but has not yet reached age 65; and

- is no longer contributing to Canada or Quebec Pension Plan (regardless of whether you are still contributing to the social security scheme of Hungary); or

- is still contributing to the Canada Pension Plan but has nonetheless substantially ceased working

3. Canada Pension Plan Survivor's pension

The person may qualify for a Canada Pension Plan Survivor's pension if his/her spouse or common-law partner:

- is deceased; and
- has contributed to Canada Pension Plan anytime since the start of the Plan in 1966
- had contributed to the Canada Pension Plan or the social security scheme of Hungary for a minimum period (which can vary between 3 and 10 years, depending on the spouse's or common-law partner's age at the time of death); and
- if the person

- had reached age of 35 at the time of spouse's or common-law partner's death; and

- had not yet reached age 35 at the time of the spouse's or common-law partner's death but

- is disabled; or
- was caring for a dependent child at this time

Survivor's pensions are payable under the same conditions to widows and widowers.

Pensions are payable even if the person remarries.

4. Canada Pension Plan Surviving Child's benefit

A dependent child (including an adopted child) of a deceased person may qualify for a Surviving Child's benefit if he or she is

- under age 18; or
- between ages of 18 and 25 and in full-time attendance at school or university; and
- if the deceased parent:

- had contributed to Canada Pension Plan anytime since the start of the Plan in 1966

- had contributed to the Canada Pension Plan or the social security scheme of

Hungary for a minimum period (which can vary between 3 and 10 years, depending on the parent's age at the time of death);

5. Canada Pension Plan Death benefit

A single-payment death benefit may be paid to the estate of a deceased person, or, in the absence of an estate, to the person responsible for the funeral expenses, the surviving spouse or common-law partner, or the next of kin, if the deceased person:

- had contributed to Canada Pension Plan anytime since the start of the Plan in 1966
- had contributed to the Canada Pension Plan or the social security scheme of Hungary for a minimum period (which can vary between 3 and 10 years, depending on the spouse's or common-law partner's age at the time of death);

6. Canada Pension Plan Disability pension

The person may qualify for a Canada Pension Plan Disability pension if he/she

- has became disabled; and
- has not yet reached age of 65; and
- has contributed to Canada Pension Plan anytime since the start of the Plan in 1966
- has contributed to the Canada Pension Plan or the social security scheme of Hungary during four of the six years immediately prior to his/her disablement

In order to be considered disabled under the Canada Pension Plan, the person must have a physical or mental disability, which is severe or prolonged.

7. Canada Pension Plan Disabled Contributor's Child's benefit

If the person qualifies for a Disability pension and if he/she cares for a dependent child (including an adopted child), the child may qualify for a Disabled Contributor's Child's benefit if he or she is:

- under age 18; or
- between ages of 18 and 25 and in full-time attendance at school or university.

9. Conclusions related to Hungary's experience

Hungary has negotiated bilateral social security agreements to enhance the cooperation between the social security authorities of the other countries involved and to ensure the adequate portability of contributions and entitlements for migrant workers and their families.

Nevertheless, not all bilateral social security agreements cover all benefits, so the degree of portability may vary. Most agreements refer to long-term benefits like old-age, disability, survivor pensions, and other annuities. The provisions ensure that periods of contribution to these pensions that have been paid in either of the two states are totalized and payment of pensions can be obtained in either country.

The most bilateral social security agreements include the so-called non-discrimination clause. This means that nationals of the signatory states of the agreement are treated equally in the two countries with respect to social law. Since nationals of migrant – receiving countries can easily enjoy their pension while residing in any other country in the world without suffering any reduction in their pensions, any national of a country with which an agreement has been concluded enjoys the same right.

Finally, none of the current bilateral social security agreements envision an export of pensions by a transfer of contributions between the social security institutions of the home and the host country. In fact, the agreements specifically aim at avoiding such transfers. Instead, all pensions are paid directly from the various social security institutions to the migrant. The aim of bilateral social security agreements — and in case of the EU, multilateral agreements — is to coordinate national social security law, not to create any form of supranational social security system. For pension benefits, the key element for portability is totalization of contribution periods and amounts in order to avoid disadvantages in eligibility and replacement rate. Such bilateral negotiations are likely to be difficult, in particular if the benefits systems between Hungary and other countries are very different.