REPUBLIC OF TURKEY

The Application of Long-term Pension Provisions on Bilateral Agreements

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Bilateral Social Security Agreements

❑ Countries From Europe

- United Kingdom
- Germany
- Netherland
- Belgium
- Austria
- Switzerland
- France
- Denmark
- Sweden
- Norway
- Turkish Republic Of Northern Cyprus
- Macedonia
- Romania
- Bosna – Herzigova
- Czech Republic
- Albania
- Luxemburg

❑ Another Countries

- Azerbaijan
- Georgia
- Libia
- Canada
- Quebec

The Brief Characteristics Of Turkish SSA

COUNTRY	DATE OF SIGNING	ENFORCEMENT DATE	COVERAGE	
			LONG-TERM	SHORT TERM
01. UK	09.09.1959	01.06.1961	✓	
02. GERMANY	30.04.1964	01.11.1965	✓	✓
03. NETHERLAND	05.04.1966	01.02.1968	✓	✓
04. BELGIUM	04.07.1966	01.05.1968	✓	✓
05. AUSTRIA	12.10.1966	01.10.1969	✓	✓
06. SWITZERLAND	01.05.1969	01.01.1972	✓	
07. FRANCE	20.01.1972	01.08.1973	✓	✓
08. DENMARK	22.01.1976	01.02.1978	✓	
09. SWEDEN	30.06.1978	01.05.1981	✓	
10. NORWAY	20.07.1978	01.06.1981	✓	
11. LIBIA	13.09.1984	01.09.1985	✓	
12. TURKISH REPUBLIC OF NORTHERN CYPRUS	09.03.1987	01.12.1988	✓	✓
13. MACEDONIA	06.07.1998	01.07.2000	✓	✓
14. AZERBAIJAN	17.07.1998	09.08.2001	✓	✓
15. ROMANIA	06.07.1999	01.03.2003	✓	✓
16. GEORGIA	11.12.1998	20.11.2003	✓	
17. BOSNIA-HERZEGOVINA	27.05.2003	01.09.2004	✓	✓
18. CANADA	19.06.1998	01.01.2005	✓	
19. QUEBEC	15.10.1998	01.01.2005	✓	
20.CHECH REPUBLIC	28.06.2001	01.01.2005	✓	✓
21. ALBANIA	15.07.1998	01.02.2005	✓	✓
22. LUXEMBURG	08.12.2004	01.06.2006	✓	✓

Ongoing Studies On New Bilaterals

COUNTRY	EXPLANATION
CROATIA	The agreement and the administrative agreement were signed in 2006 and they shall be accepted by The Turkish Grand General Assembly (TGGA).
SERBIA	The agreement and the administrative agreement were signed in 2005 and updated in October 2009 but waiting to be accepted by TGGA.
ISRAEL	The bilateral agreement was paraphed on 2000.
SLOVAKIA	The agreement and the administrative agreement were signed in 2007 and they will be ratified by the TGGA.
UZBEKISTAN	The bilateral agreement paraphed on 1998.
MOROCCO	The social security agreement negotiation is continuing.
PORTUGAL	The European Social Security Agreement is implemented between Turkey and Portugal
ITALY	The European Social Security Agreement is implemented between Turkey and Italy
SPAIN	The European Social Security Agreement is implemented between Turkey and Spain

The Brief Characteristic of Turkish SSA

Turkey has entered into 22 bilateral social security agreements, the first one of which dates back to 1959.

- Half of the conventions were concluded with countries which are currently EU Member States.
- The latter signed SSA's are applying the EU *acquis* on the free movement of persons (Switzerland in 1969, Norway in 1978)
- The early social security conventions have been modified (e.g. the agreements with Germany, Belgium and the Netherlands) or even completely replaced (the agreement with Austria in 1966 and 1982; the agreement with Denmark in 1999 and the agreement with Libya in 1984).

The Brief Characteristics of Turkish SSA

- All agreements have one General Administrative Agreements, setting out in detail the procedure for implementing the conventions' provisions. When Agreements change, these General Administrative Agreements are also modified.

- The scope of the recent agreements does not only cover to employed and self-employed persons, but also include non-economically active persons.

- The personal field of application is defined in line with the new coordination Regulation 883/2004

- The early agreements have a more restricted personal scope. (e.g. Netherland, Sweden, Belgium)

The Brief Characteristics of Turkish SSA

- All agreements extend to the family members and survivors of the respective persons covered.

- Social security conventions applies to the bulk of the contingencies provided for in the social security legislation of the countries concerned.

- The overall majority of schemes covered are contributory in nature, although non-contributory schemes (notably family allowances) are included in the scope of some of them.

The Brief Characteristics Of The Turkish SSA

•All selected conventions apply to the following schemes

Bilateral Social Security Agreements

- Sickness (Cash Benefits and Healthcare)
- Maternity
- Invalidity
- Old-age
- Survivorship
- Accidents At Work and Occupational Diseases

The Brief Characteristics of Turkish SSA

- The agreements TR-LU and TR-NL also apply to unemployment benefits. As regards to the recent agreements, this coverage is unilateral, in the sense of that only Dutch unemployment benefits are covered.

- Several agreements include family benefits in their scope. This is the case, notably, for the agreements TR-DE, TR-BE, TR-NL, TR-LU and TR-SE.

- Several conventions include family benefits in their scope. This is the case, notably, for the agreements TR-DE, TR-BE, TR-NL, TR-LU and TR-SE

- Separate long-term care insurance schemes are not only the part of scope of bilateral agreements, but also they are included the material scope of the Coordination Regulations.

General Principles in Model Provisions

- Why Do We Need Bilateral Social Security Agreements?
- Bilateral Instrument Between Two Countries
- To Protect the Interest Of Workers In The Host Country
- Equality Of Treatment With Host Country National
- Dealing With The Non-Coverage Of Insurance
- Avoidance Of Double Coverage Of Contributions

General Principles in Model Provisions

- Equality of Treatment;

  seeks to ensure that persons who are resident in the territory of either contracting party and/or to whom the convention applies, have the same rights and obligations as the nationals of the other contracting party.

- This means that they receive the same benefits and are subject to the same conditions of entitlement.

- The principle of equal treatment is not extended to participation in social security administration or membership of social security tribunals.

- Export of Benefits;

  The model agreement provides to export of benefits in general. They clearly state that no benefit shall be restricted solely on the basis that the recipient resides in the territory of the other contracting party.

- There are two important exceptions to this general rule.
  1. Unemployment benefits are paid to a person who is promising to seek work.
  2. The second exclusion from export is special benefits granted as assistance or in case of need.

General Principles in Model Provisions

The Prevention of the Overlapping of Benefits;

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

- There is one exception to the application of overlapping rules to benefits received in the other contracting party. This relates to pensions for old age, invalidity and survivors. International social security law often requires long-term benefits to be paid by more than one country.

General Principles in Model Provisions

Determining the Applicable Legislation;

- According to Model agrement, only one legislation should be applicable at any time for one and same employment or occupation.
- The model agreements based three basic rules for the determination of the applicable legislation.
  1. Employees are covered by the legislation of the contracting party in which they work, even if they reside in the other contracting party,
  2. Self-employed persons are covered by the legislation of the contracting party in which they perform their economic activity.
  3. Civil servants are covered by the legislation of the contracting party within whose administration they are employed.

Invalidity, Old-age, Survivors Benefits

- These benefits are typically long-term periodic benefits, entitlement to which is usually based on extensive periods of insurance.

- Where entitlement to a benefit is dependent on the completion of a minimum period of insurance the contracting parties are obliged to take into consideration any periods of insurance completed under the legislation of the other contracting party

- Some states operate special pension schemes for those engaged in particular occupations, for example special schemes for teachers, miners or sports persons.

Invalidity, Old-age, Survivors Benefits

- These special schemes will only have to aggregate periods of insurance in the other contracting party if these periods were completed under a similar special scheme or within the relevant occupation.
  - A miner example.

- Some states make the payment of an invalidity or survivor's pension conditional on the risk, i.e. long-term incapacity for work or death, occurring within their territory.
- For such cases the model provisions provide that if the risk occurs in the other contracting party it must be treated as having occurred in the competent state

The model provisions provide two alternatives for the calculation of the amount of benefit for those persons who have been subject to the social security pension law of both contracting parties

1. Pro-rata Calculation

2. Direct Calculation

- The first alternative is called the "pro-rata calculation". Each contracting party must go through the following stages:

  - Firstly, if the person is entitled to a benefit solely in accordance with the period of insurance completed within your territory then your country shall pay that benefit.
  - Secondly, add together the periods of insurance completed in each contracting party.
  - Thirdly, calculate the theoretical amount, this is the pension the person would receive had all the aggregated periods of insurance been completed in your country.
  - Lastly, Your country must pay a pension which is in proportion to the insurance period completed in your country compared to the total aggregated insurance period.

- This four-stage process is best understood using an example:
  - State A and State B have selected this alternative from the model provisions.
    - In State A a full (basic) pension of 800 EUR per month is paid to those who have been insured for 40 years (2% for each year), provided they have been insured for at least 20 years.
    - In State B a pension of 50% of the maximum national pension (1000 EUR) plus 1% for each year is paid to those who have been insured for at least 25 years, the maximum period taken into account being 50 years.
    - A worker is insured in State A for 18 years and State B for 24 years.

Invalidity, Old-age, Survivors Benefits

- Stage One: neither contracting party is able to pay this worker a pension under national law solely on the basis of the insurance periods s/he has completed in their territory.
- Stage Two: aggregating the periods of insurance completed in each contracting party gives a total of 42 years of insurance, this is enough to satisfy the entitlement conditions in both states.
- Stage Three: the theoretical amount in State A is therefore 800 EUR, and 50% + 42 x 1% of 1000 EUR = 920 EUR in State B.
- Stage Four: The pension to be paid by State A is equal to 18/40 x 800 EUR = 360 EUR per month, note that the fraction used is not 18/42 because the maximum insurance period in State A is 40 years. The pension to be paid by State B is equal to 24/42 x 920 EUR = 526 EUR (rounded) per month. This gives the person a total pension of 886 EUR per month.

Invalidity, Old-age, Survivors Benefits

- If the periods completed in one contracting party are more than the fixed denominator, then the full benefit or the full additional period is to be taken into account.

- Please note that this special pro rata calculating does not apply to pensions that are paid as a result of supplementary insurance or benefits that are means-tested and paid in order to guarantee a sufficient minimum income.

- These benefits would be payable in full.

- The second alternative is referred to as the "direct calculation".

  - In this case the pensions are generally calculated in each contracting party according to the insurance periods completed in that contracting party.

  - The advantage of the second alternative is that there is no need to know the precise periods for which a person was insured in the other state but to know them only as far it is necessary to determine entitlement to a pension.

Invalidity, Old-age, Survivors Benefits

- The direct calculation is best understood using the same example as above:
  - Stage One: neither contracting party is able to pay this worker a pension under national law solely on the basis of the insurance periods s/he has completed in their territory
  - Stage Two: aggregating the periods of insurance completed in each contracting party gives a total of 42 years of insurance, this is enough to satisfy the entitlement conditions in both states
  - Stage Three: State A calculates its pension directly on 18 years and has therefore to pay 18 x 2% of 800 EUR = 288 EUR per month. In State B 50% of the maximum national pension does not depend on the length of periods completed, so from this part of the pension only 24/30 would be payable. State B has therefore to pay a monthly pension of 24/30 of 50% of 1000 EUR + 24 x 1% of 1000 EUR = 400 EUR + 240 EUR = 640 EUR. This gives the person a total pension of 928 EUR per month.

Death Grants

- Death grants refer to lump sum payments made upon an insured person’s death. They are often subject to minimum periods of insurance, these typically have to be fulfilled by the deceased rather than his/her survivors. Where minimum periods of insurance are required then the principle of aggregation shall apply.

- When someone dies in one contracting party his/her death shall be treated in the other contracting party as if it had occurred there. This rule affects those countries that only pay benefits if the contingency occurs within their own territory.

- It may be that there is entitlement to a death grant from both contracting parties. In this case the contracting party in which the person died is responsible. If the person died outside the territory of both contracting parties then the death grant should be paid by his/her place of last insurance.