

▶ ILO Brief

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Intervention Model: The eight-step process to negotiating a social security agreement.

Key messages

- ▶ The conclusion of bilateral or multilateral social security agreements is one of the most effective and commonly used policy options for extending social protection to migrant workers.
- ▶ These agreements are treaties designed to coordinate the social security schemes of two or more countries in order to overcome barriers that might otherwise prevent migrant workers from receiving benefits under the system of any of the countries in which they have worked.
- ▶ Social security agreements should contain provisions that embody the following key principles:
 - ▶ equality of treatment between nationals and non-nationals;
 - ▶ determination of the applicable legislation;
 - ▶ maintenance of acquired rights and payment of benefits abroad;
 - ▶ maintenance of rights in the course of acquisition (totalization);
 - ▶ reciprocity; and
 - ▶ mutual administrative assistance.
- ▶ Negotiating a social security agreement generally involves eight steps: (1) preliminary discussions; (2) preparation of an initial draft agreement by one of the parties; (3) negotiations; (4) review of the agreed text; (5) signing the agreement; (6) approving the agreement; (7) conclusion of the administrative arrangement and preparation of application forms; and (8) entry into force of the agreement.
- ▶ Social security agreements that are well designed and implemented effectively can contribute significantly to realization of the right to social security for all.
- ▶ As of 2021, there are approximately 660 social security agreements worldwide.

¹ Social protection, or social security, is a human right and is defined as the set of policies and programmes designed to reduce and prevent poverty, vulnerability and social exclusion throughout the life cycle. Social protection includes nine main areas: child and family benefits, maternity protection, unemployment support, employment injury benefits, sickness benefits, health protection (medical care), old-age benefits, invalidity/ disability benefits, and survivors' benefits. Social protection systems address all these policy areas by a mix of contributory schemes (social insurance) and non-contributory tax-financed benefits (including social assistance)¹ (ILO 2021, p. 226-228). In most ILO documents, the terms "social security" and "social protection" are used interchangeably and encompass a broad variety of policy instruments, including social insurance, social assistance, universal benefits and other forms of cash transfers and measures to ensure effective access to healthcare and other benefits in kind with a view to securing social protection.

► Why this intervention model?

Drawing from the [ILO Guide on Extending Social Protection to Migrant Workers, Refugees, and their Families](#) developed in collaboration with ISSA and ITCILO, the Intervention Models aim to provide policymakers and practitioners with succinct practical guidance on how to extend social protection to migrant workers. This intervention model provides an overview of what a social security agreement is along with the steps involved in negotiating one.

► Introduction

What are social security agreements?

Social security agreements, both bilateral and multilateral, are treaties that are governed by international law and are designed to coordinate the social security schemes of two or more countries in order to overcome, on a reciprocal basis, the barriers that might otherwise prevent migrant workers from receiving benefits under the system of any of the countries in which they have worked. They may include any of the nine branches of social security defined in the ILO's flagship Social Security (Minimum Standards) Convention, 1952 (No. 102).

In 2020, there were 660 social security agreements worldwide, indicating a steady increase from around 100 in 1980. This trend is common to all regions, although the greatest number of bilateral agreements have been signed in Europe, followed by the Americas, Asia and the Pacific, and Africa (see Figure 1). Almost 90 per cent of the agreements provide for old-age, disability and survivors' benefits, while less than 50 per cent include other branches of social security (see Figure 2). For more information see [ISSA Global overview of international social security agreements](#).

Figure1: Number of bilateral social security agreements for each region, 1960– 2020

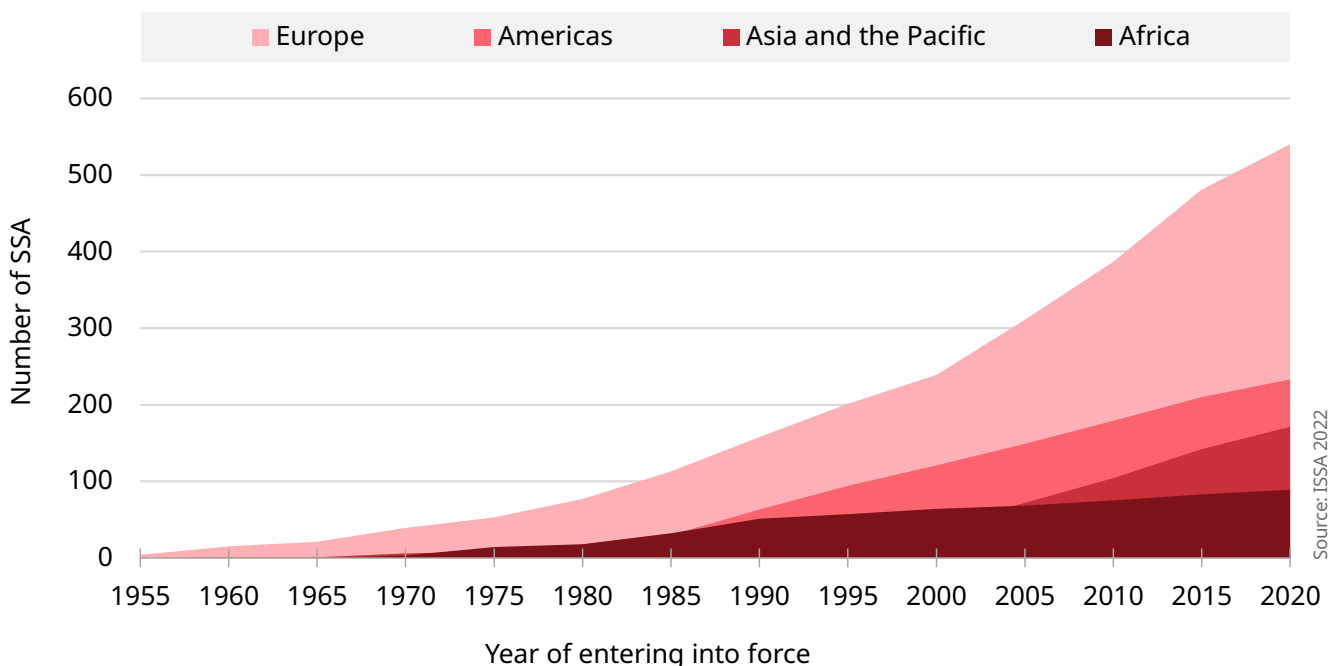
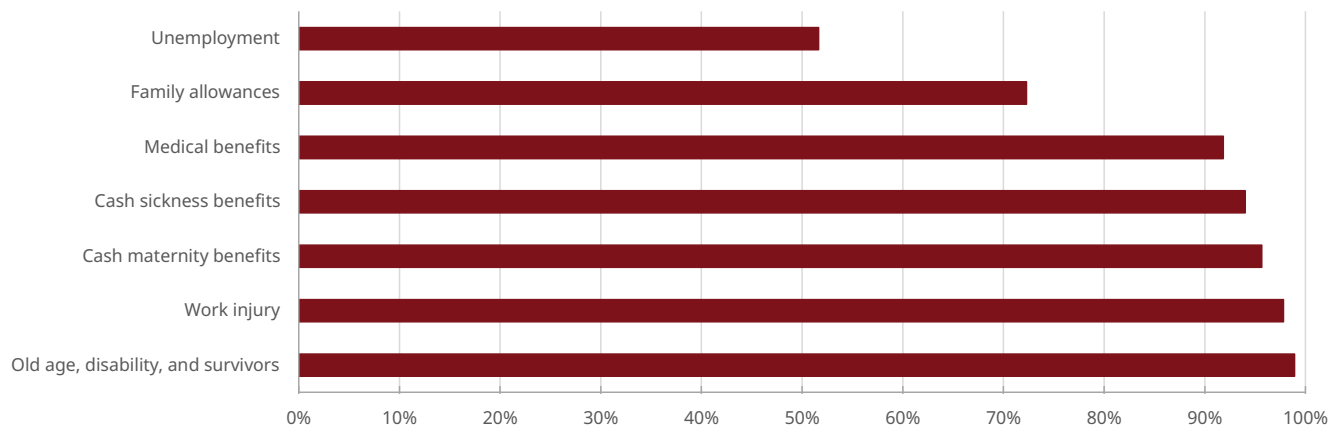


Figure 2: Branches covered in social security agreements



Source: ISSA 2022

Globally there are 10 multilateral agreements in force in different regions. Bilateral and multilateral agreements are not mutually exclusive; they can be complementary and pursued simultaneously.

Table 1: Bilateral vs. multilateral social security agreements

Bilateral social security agreements	Multilateral social security agreements
<ul style="list-style-type: none"> • concluded between two countries; • can result in different rights for migrant workers and their families from different countries; • easier to conclude than a multilateral agreement although complex issues can arise; and • may be easier to coordinate and implement in practice as there are only two parties involved. 	<ul style="list-style-type: none"> • concluded between three or more countries, often on a regional basis; • provide a uniform set of rules for all migrants who have worked in the States' parties and for their family members; • ensure freedom of movement and consistency with the objectives of economic regions and trade agreements as they facilitate labour mobility within a (sub)region; and • can be more lengthy or complex to negotiate although negotiations may also be facilitated by political leverage to include more reluctant countries within a region.

Bilateral and multilateral agreements usually do not cover migrant workers in the informal economy or those whose status is irregular. However, the mere existence of these agreements can be an incentive for workers to migrate through regular channels and work in the formal economy in order to benefit from the social protection that they provide.

Why extend social protection to migrant workers through social security agreements?

Despite the existence of a clear international legal framework governing the right to social security, this right does not always translate into universal effective access to healthcare and social security benefits for all migrant workers around the world. On the contrary, in many countries legal, administrative, and other obstacles hinder migrants' access to social protection.

To overcome these obstacles, a variety of policy options and measures are available to policymakers. The conclusion of social security agreements is one of the most comprehensive and most commonly used options for ensuring the coordination of social security schemes and the portability of entitlements and benefits across countries.

▶ Key elements of social security agreements

Social security agreements commonly include:

- ▶ **definitions** of the main terms used in the agreement (e.g. worker, benefits, territory, refugee, residency, stay, insurance period etc.).
- ▶ **personal scope** which refers to the category of workers covered and/or explicitly excluded (e.g. self-employed, domestic workers, seafarers etc.).
- ▶ **material scope** which refers to the branches or type of schemes (general or specific) and benefits covered. Social security agreements may include any of the nine branches of social security defined in the ILO's flagship Social Security (Minimum Standards) Convention, 1952 (No. 102).
- ▶ **key social security principles** (see below box). Some agreements include all of them, others only a set. The provisions detailing the key principles also vary from one agreement to another. For example, there are a variety of potential apportionment and calculation methods for the maintenance of rights in the course of acquisition. With respect to determination of the applicable legislation, the law of the country of employment generally prevails with exceptions for posted and detached workers.
- ▶ **eligibility criteria and minimum conditions** for accessing benefits;
- ▶ provisions establishing the **competent authority** – the ministry or institution responsible for social security – and the competent institutions and agencies in each of the States parties.
- ▶ **miscellaneous and transitional provisions** (administrative arrangements and dispute resolution systems).

Guidelines for drafting a social security agreement can be found in the two annexes of the [Recommendation on the Maintenance of Social Security Rights, 1983 \(No. 167\)](#): annex I includes model provisions for the conclusion of bilateral or multilateral social security instruments, and annex II contains a model agreement for coordinating bilateral and multilateral social security instruments.

Some countries have considered harmonizing their national legal frameworks in order to fully align their social protection systems rather than coordinating social security through agreements designed to facilitate the portability of entitlements. However, this approach ignores the substantial challenges of harmonizing social security schemes across countries.

Box 1: The key principles promoted by ILO Conventions and Recommendations

Social security agreements address the lack of coordination between social security schemes through the inclusion of provisions that enshrine the key principles promoted by ILO Conventions and Recommendations with regard to the coordination of social security schemes and the protection of migrant workers. These principles consist of:

- ▶ **Equality of treatment** recognizes that migrant workers should have, to the extent possible, the same rights and obligations as nationals of the destination country with regard to social security coverage and social security benefits.
- ▶ **Determination of the applicable legislation** calls for the establishment of rules to ensure that migrant workers are governed by the legislation of only one country at any given moment. An employed person should normally be subject to the legislation of the country in which he or she is employed (principle of *lex loci laboris*). Exceptions to this principle are sometimes made in the case of posted workers, self-employed migrant workers and temporary migrant workers.
- ▶ **Maintenance of acquired rights and provision of benefits abroad** recognizes that migrant workers who have acquired rights in one territory should be guaranteed those rights in any of the States parties to the agreement. Under this principle, benefits payable under the legislation of one State party should be paid abroad and should not be subject to any restrictions (reduction, modification, suspension, cancellation, or confiscation) simply because the person resides in the territory of another State party.
- ▶ **Maintenance of rights in the course of acquisition** (also referred to as totalization) provides for the accumulation of qualifying periods under different national social security schemes with a view to the aggregation or totalization of periods of insurance, employment or residence that may be required for the acquisition, maintenance or recovery of rights and for sharing the costs of benefits paid.
- ▶ **The provision of mutual administrative assistance** ensures the coordination and the data and information exchange required for the implementation of social security agreements.

In addition, **reciprocity** requires each States party to an agreement to apply the same mechanisms as the other States parties in order to make its social security benefits more accessible to migrant workers. However, reciprocity in bilateral agreements can also have a limiting effect, particularly for refugees (since they cannot avail themselves of the protection of their countries of origin) and during negotiations where the social security systems of two States parties to a bilateral agreement are at different stages of development.

▶ Obstacles and challenges

Countries may face certain obstacles and challenges when negotiating, developing or implementing social security agreements. For instance, the **geopolitical considerations** (immigration versus emigration countries) and the **different levels of economic development** between countries may lead to an unequal power balance during negotiations. Furthermore, factors such as: **high numbers of migrants in an irregular situation**; a large proportion of **workers working in the informal economy** and generally a **lack of, or insufficiently developed social security schemes**, may hinder the development of reciprocal agreements. Similarly, the **lack of institutional and administrative capacity** to provide social protection benefits and implement the agreement can be a challenge. Finally, **significant differences in social security schemes**, for example, with regard to the design and level of benefits (such as provident funds versus social insurance schemes), may pose a challenge for coordination between them. Contrary to common belief, these challenges are not insurmountable. In fact, [Recommendation No. 167](#) provides useful guidance in this regard.

► Negotiating a social security agreement: An eight-step process

The ILO has often been requested to support the negotiation and development of multilateral or bilateral social security agreements. Based on the Organization’s experience and that of experts and former negotiators, an eight-step process, that can be of use to any country that wishes to negotiate or renegotiate a social security agreement, has been identified and is generally followed. This list is not exhaustive and should be adapted to the specific situation and context.

Figure 3: The eight steps in the negotiation process of a social security agreement



Step 1: Preliminary discussions

Preliminary discussions are often based on informal meetings or email exchanges between technical social security experts working in the relevant ministry or social security institutions of each country. The composition of the delegation depends on the branches to be negotiated. The corresponding discussions involve exchanging information on the countries’ respective national social security systems. Furthermore, the experts normally discuss the procedure to be followed, the time frame, and who will prepare the initial draft of the agreement.

Checklist: What information should be gathered before starting the negotiation process?

1. List of representatives of each country that will be involved in the negotiation process.
2. All relevant information regarding national social security systems of the state parties should be gathered. This includes identifying:
 - i. the personal scope of relevant laws (social security, health, OSH etc.) for instance whether they cover migrants, domestic or agricultural workers, self-employed, refugees etc.;
 - ii. the material scope of relevant laws (e.g., the branches covered (sickness, healthcare, old-age, survivors, disability, employment injury, family, unemployment, maternity));

- iii. relevant social protection policies and schemes whether they are contributory or non-contributory, general or specific, public or private;
 - iv. relevant information on eligibility requirements and minimum conditions for accessing benefits, calculation methods used for certain benefits (e.g. pension);
 - v. any other relevant information.
3. Other relevant policies and laws at national and/or regional level (migration or mobility, employment, formalisation, health etc.)
 4. Country's preferences for the application of the five key principles (see Box 1.). These will need to be presented and explained to the other countries involved in the negotiation process.
 5. The target group of the agreement and any exclusions, if applicable.

Step 2: Preparation of an initial draft agreement

The delegation often comprises technical officials from Ministries of Health, Labour, Welfare, Social Protection, Social Affairs and Foreign Affairs and/or other government agencies and social security institutions/funds. Preparation of the initial draft agreement based on the information collected (see checklist above) is the starting point of the negotiations. Once prepared, the draft agreement, and counterproposals, if any, should be shared with all negotiating parties well in advance of the negotiations so that their respective experts can analyse the provisions and make recommendations.

Step 3: Negotiations

The purpose of the negotiations is to establish the text of the social security agreement. This may require one round or several. Before each round, the negotiating countries' experts conduct a detailed review of the preliminary draft(s).

The outcome of the discussions during each round should be summarized in minutes, which should also contain an annex with the revised draft of the agreement, a list of the participants and any other relevant material agreed by the parties. These minutes should also include an explanation or clarification of any contentious matters that arose during the discussions. The discussion of any contentious point may be postponed to the next round of negotiations or resolved through a subsequent exchange of correspondence. It is common practice that the drafting of the minutes is done by the country hosting the negotiations.

When the negotiations have been completed and the text agreed upon, the heads of the respective country delegations initial the text as a sign of their formal consent. This does not, however, preclude subsequent changes after further review of the text, provided that all of the negotiating parties agree to the modifications.

Step 4: Review of the agreed text

Once the negotiations have ended, the draft agreement must be reviewed by the relevant authorities of each negotiating country, usually the Ministry of Justice, the Ministry of Foreign Affairs, and others as appropriate. At this stage, the parties review their national laws and treaty practice, including constitutional issues. This stage should not serve as an opportunity to reopen the negotiations. Modification of the agreed text resulting from the review should be kept to a strict minimum and should be agreed by all of the negotiating countries. In the event that there is no agreement, the negotiating parties either: (1) repeat step 3 and continue the negotiations; (2) temporarily suspend the process with the intention to resume negotiation at a later date; (3) abandon the process or (4) officially cancel the process. Non-social security issues, which do not fall within the mandate of the negotiation team, may be addressed outside of the negotiation process.

Step 5: Signing of the agreement

Once the draft text has been reviewed and the suggested modifications agreed by all of the negotiating countries, the agreement is ready to be signed. An original copy of the signed agreement should be retained by each negotiating country and deposited in the treaty registry of its Ministry of Foreign Affairs.

If the countries do not speak the same language, they will have to agree on the official language(s) of the agreement and have it translated into their national language(s) if necessary. If an agreement is signed by an official other than the country's Head of State, Head of Government or Minister of Foreign Affairs, the country should provide an instrument of full powers certifying that the official is authorized to sign the agreement on the country's behalf.

Step 6: Approval of the agreement

An agreement usually enters into force following its approval or ratification by each of the countries concerned. Ratification or approval depends on the national procedure, such as parliamentary vote, approval by the Council of Ministers or enacting legislation.

Step 7: Conclusion of the administrative arrangement

The administrative arrangement is fundamental to the implementation and administration of a social security agreement and should preferably be concluded before the agreement enters into force. As such, it complements the social security agreement by regulating in greater detail all relevant aspects of administrative assistance with its application, the legislation to which it applies and the operational procedures that each country must follow.

While a social security agreement establishes the legal framework for coordination of the parties' national social security systems and sets out the principles for administrative assistance between them, an administrative arrangement should be limited to the relevant administrative and operational issues. Gaps, omissions or imprecisions regarding the rights and obligations established in the agreement cannot be corrected or amended through the administrative arrangement.

Administrative arrangements include administrative forms which usually collect personal data such as name, age, gender, national insurance number, nationality, marital status, domicile and dates of entry into, stay in and departure from the country.

Depending on the social benefit, additional information, including the date of incapacity or medical treatment for invalidity pensions, relationship to the contributor for death benefits, employment status and declaration of activities, may be requested.

Medical reports are required for health benefits and invalidity pensions. Administrative forms may also provide important information on methods of payment and on the documentation to be submitted and include provisions on the use and maintenance of data and data protection.

Step 8: Entry into force

The agreement enters into force when it has been approved or ratified and the administrative arrangement has been signed.



► Examples of social security agreements

Agreements and arrangements	Personal scope	Material scope	Key social security principles	Observations
<p>Convenio de Seguridad Social entre la República de Argentina y la República de Chile.</p> <p>Acuerdo administrativo para la aplicación del Convenio de Seguridad Social entre la República de Argentina y la República de Chile.</p>	<p>Persons who are or who have been subject to the legislation of either Party, irrespective of their nationality.</p> <p>Dependents of the above-mentioned persons.</p>	<p>Chile Old-age, survivors, and invalidity², as well as health.</p> <p>Argentina Old-age, survivors, invalidity, and family, and medical assistance for retirees/pensioners only.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	<p>Example of coordination between a provident fund and an insurance system.</p> <p>Chile has a defined contribution pension system managed by private entities based on individual accounts while Argentina has a Pay-as-you-go system.</p>
<p>Canada, Government of. 1990. Proclamation declaring the agreement on Social Security between Canada and the Netherlands in force October 1, 1990, Agreement on social security and its administrative arrangement.</p>	<p>Nationals of both Parties.</p> <p>Persons who are or who have been subject to the legislation of either Party.</p> <p>Dependents of the above-mentioned persons.</p>	<p>Canada Old age.</p> <p>Netherlands Old age, invalidity, survivors, sickness, unemployment, children's allowances.</p> <p>Excluded: Special schemes for civil servants. Social and medical assistance schemes. Benefit schemes for victims of war.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	
<p>France, Tunisia: General Convention on social security of 26 June 2003.</p>	<p>Salaried or self-employed workers, unemployed persons receiving benefits, nationals of one of the two Contracting States, refugees or stateless persons.</p> <p>Civil servants and non-working persons may, under certain conditions, benefit from certain provisions of the agreement.</p>	<p>Sickness, maternity, old age, Invalidity. Survivors, sickness, unemployment, family benefits, work accident and occupational diseases.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	<p>Special provisions for posted workers.</p>
<p>India, Government of. 2017. Agreement on Social Security between India and Germany and administrative arrangement.</p>	<p>Persons who are or who have been subject to the legislation of either Party.</p> <p>And other persons to the extent they derive rights from such persons (dependents).</p>	<p>Germany Old age (statutory pension insurance), steelworkers' supplementary insurance as regards the export of benefits, farmers' old age.</p> <p>India Old age for employed persons, survivors for employed persons, permanent disability for employed persons.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	<p>Special provisions for detached workers and for diplomatic missions or consular posts.</p>
<p>Agreement on social security between the Government of Australia and the Government of the Republic of Korea, 6 December 2006 and entered into force on 1 October 2008.</p>	<p>Persons who are or have been an Australian resident or are subject to the legislation of Korea, and persons in regard to the rights derived from the person described above (e.g., dependants).</p>	<p>Republic of Korea Old age pensions and lump sum refund.</p> <p>Australia Age pensions and the superannuation guarantee.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	<p>Self-employed workers who are residents of the Republic of Korea shall be subject only to the legislation of the Republic of Korea.</p> <p>Special provisions for seconded workers, seafarers, diplomatic and consular workers etc. (art 10 and 11).</p>
<p>MERCOSUR Multilateral Agreement on Social Security (Argentina, Brazil, Paraguay and Uruguay) and its administrative arrangement.</p>	<p>Workers who provide or have provided services in any of the States Parties, recognizing them, as well as their relatives and assimilated.</p> <p>Workers of any other nationality residing in the territory of one of the States Parties as long as they provide or have provided services in said States Parties.</p>	<p>Old age, survivors, invalidity, and healthcare.</p>	<ul style="list-style-type: none"> • Equality of treatment, • Payment of benefits abroad, • Applicable legislation, • Maintenance of rights in the course of acquisition (totalization), and • Mutual administrative assistance. 	<p>Self-employed workers are covered by the Agreement.</p> <p>Special provisions for detached workers as well as seafarers, diplomatic and consular workers etc. (Art. 5).</p>

² Chile operates two old-age, survivors' and disability pension systems in parallel. Since 1982, anyone entering the labour market as an employee became a member of the individual funding system managed by private companies, which has been gradually replacing the old state pay-as-you-go system. A new solidarity pillar has been added recently to the system too.

► Conclusion

To overcome the obstacles migrant workers face to benefit from social protection, a variety of policy options and measures are available to policymakers. The conclusion of social security agreements is the most comprehensive and most used measure for ensuring the coordination of social security schemes and the portability of entitlements and benefits across countries.

ILO Conventions and Recommendations provide useful guidance and a model for the development of such agreements. They promote the inclusion of the key social security principles (detailed above). There are 660 social security agreements worldwide. Most agreements cover old-age, disability, and survivors' benefits, and less than half cover also other branches. These agreements however do not extend to migrant workers operating within the informal economy or with irregular migration status, except for specific social protection rights arising out of prior employment.

In addition, countries may face certain obstacles and challenges when negotiating or implementing social security agreements.

The eight-step process detailed in this model, provides useful guidance on how to negotiate a social security agreement. After reaching an agreement on the content and procedure for cooperation, it is necessary to set up further coordination mechanisms. Indeed, the effective implementation of social security agreements, requires administrative coordination, common databases and shared information systems. The ISSA has prepared guidelines on information and communication technology (ICT) for this purpose.

► Bibliography

- Hirose, Kenichi, Miloš Nikac and Edward Tamagno. 2011. Social Security for Migrant Workers: A Rights based Approach. Geneva: ILO. https://www.ilo.org/budapest/what-we-do/publications/WCMS_168796/lang-en/index.htm
- ILO (International Labour Organization). 2021. Extending Social Protection to Migrant Workers, Refugees, and their Families: Guide for Policymakers and Practitioners. https://www.ilo.org/global/topics/labour-migration/publications/WCMS_826684/lang-en/index.htm
- ISSA (International Social Security Association). 2016. Handbook on the Extension of Social Security Coverage to Migrant Workers. <https://ww1.issa.int/node/181888>.
- . 2022. Global overview of international social security agreements. <https://ww1.issa.int/international-agreements>.
- Ruggia-Frick, Raul. 2016. "Coordinating Social Programmes: Analysis of Scenarios and Implementation Approaches Based on the ISSA Guidelines on ICT". International Social Security Review 69:3-4.
- Van Panhuys, Clara, Samia Kazi-Aoul and Geneviève Binette. 2017. "Migrant Access to Social Protection under Bilateral Labour Agreements: A Review of 120 Countries and Nine Bilateral Arrangements", Extension of Social Security (ESS) Paper Series No. 57. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=54405>

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