India-EU Common Agenda on Migration and Mobility

# Are Social Security Agreements between India and EU Member States Valuable and Effective?

## Implementation and Actual Benefits

India-EU Cooperation and Dialogue on Migration and Mobility Project:

ICM India Centre for Migration
**Local Partner**

ICMPD International Centre for Migration Policy Development
**Implementing Partner**

International Labour Organization
**Implementing Partner**

First published 2021



---

ISBN: 9789220356760 (Print)

ISBN: 9789220356753 (Web PDF)

---



**Information on ILO publications and digital products can be found at: www.ilo.org/publns.**

This paper was produced with the financial support of the European Union. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union and Government of India.



---

Printed in India

# Are Social Security Agreements between India and EU Member States Valuable and Effective?

## Implementation and Actual Benefits

# Acknowledgement

This paper was commissioned to the Federation of Indian Chambers of Commerce and Industry (FICCI) by the ILO under the EU-India Cooperation and Dialogue on Migration and Mobility (CDMM) project which provides technical support to the India-EU Common Agenda for Migration and Mobility (CAMM).

The CDMM project is implemented by the International Labour Organization (ILO) India Office and the International Centre for Migration Policy Development (ICMPD) and local partner India Centre for Migration (ICM) - a think tank under the Ministry of External Affairs (MEA), Government of India.

This paper was prepared by Ms. Sonu S. Iyer and Mr. Puneet Gupta from EY India. Some sections were written by Ms. Seeta Sharma from the ILO DWT for South Asia and Country Office India, who conceptualized the document and provided inputs through the drafting process. Initial research also included inputs from Public Affairs Centre, Bangalore.

We are grateful to the Ministry of External Affairs and the Ministry of Labour Government of India, in particular the EPFO Division. We are also thankful to the European Union Delegation in India, the Division of the EC, in particular DG Home and DG Employment, and the India Centre for Migration, for reviewing this document and sharing their feedback.

# Table of contents

# Abbreviation

| Abbreviation | Full form |
|---|---|
| **BRIC** | Brazil, Russia, India, China |
| **CAMM** | Common Agenda on Migration and Mobility |
| **COC** | Certificate of coverage |
| **EDLI** | Employee Deposit Linked Insurance Scheme |
| **EEA** | European Economic Area |
| **EPF** | Employees' Provident Funds Scheme, 1952 |
| **EPFO** | Employees' Provident Fund Organisation |
| **EPS** | Employees' Pension Scheme, 1995 |
| **EU** | European Union |
| **KYC** | Know Your Customer |
| **PF Act** | Employees' Provident Funds and Miscellaneous Provisions Act, 1952 |
| **SSA** | Social Security Agreement |
| **TFEU** | Treaty on the Functioning of the European Union |
| **UAN** | Universal Account Number |

# 1. Executive Summary

# 1. Executive summary

Globally, bilateral social security agreements (SSAs) between countries are considered the most favoured approach to facilitate mobility of workers as they ensure the maintenance of their social security rights. These bilateral SSAs coordinate the social security schemes of two countries in order to overcome, on a reciprocal basis, the barriers that might otherwise lead to dual contributions in both the country of origin and the destination or prevent migrant workers and their family members from receiving the social security benefits due to them.

Each Member State of the European Union legislates its own social security system. For employee mobility within the European Union (EU), there is an established framework for coordination of social security systems between all 27 EU Member States, and this framework also extends to third-country nationals legally residing in the EU. While this framework is extended to few other countries (European Economic Area (EEA) countries, Switzerland), SSA with other countries have essentially remained the competence of the individual Member States.

India entered the global network of SSAs in November 2006 by signing its first bilateral agreement with Belgium. Since then, 12 bilateral SSAs have been signed between India and EU Member States. India and seven EU Member States have ratified the ILO Convention 118 – Equality of Treatment (social security), 1962 and Convention 157 – Maintenance of Social Security Rights Convention, 1982, which Spain and Sweden have ratified.

The primary purpose of this report is to investigate the effectiveness and value of SSAs between India and some EU Member States. For this study, primary data was sourced through a survey in which 21 companies based in India and sending Indians to Europe for work, reflected on the effectiveness of these agreements. Secondary data research includes technical study of agreements entered into by India with individual EU Member States, with detailed analyses of those entered into with France, Germany and the Netherlands.

The SSAs between India and individual EU Member States have been found to be effective and valuable for both employers and employees. From the employer’s perspective, a SSA avoids dual social security contributions - in the country of origin and in the country of destination. From the employee’s perspective, it prevents duplication of contributions and ensures continued social security coverage under the country of origin, while working in the destination country. The survey findings of this study confirm this.

SSAs have also been valuable for governments as they improve the competitiveness of nations by attracting the right talent from other countries and preserving long-term rights of citizens even when overseas. Such agreements also ensure social equality in the labour market, increase in remittances and continued contributions to social funds of countries of origin.

SSAs entered into by India with most EU Member States cover all legislations related to (i) old-age and survivor’s pension for employed persons and (ii) permanent and total disability pension for employed persons. Though most EU Member States have comprehensive social security systems, India does not have comprehensive universal social security coverage and therefore not all branches of social security systems are covered under the SSAs with India. This leads to only partial exemption from the social security scheme of the destination country for an employee who has obtained a Certificate of Coverage (COC) in India.

The agreements between India and individual EU Member States also have varying and complex rules relating to social security coverage and benefits. For instance, each agreement entered into by India with an EU Member State has different conditions subject to which an employee can continue social security coverage in the country of origin and claim exemption in the destination country. Some of these rules in certain SSAs are not satisfied by all migrant workers, which leads to either dual contributions or loss of coverage.

The administrative process for ensuring continued social security coverage in India includes obtaining a COC in India, which, though online, requires multiple steps to be followed by employees, employers and the Employees' Provident Fund Organisation (EPFO). Delays in the process can result in duplication of contributions in the country of origin and destination, thereby defeating the very purpose of SSAs. To expedite the COC process, the EPFO in 2020 has provided e-sign option to employers and EPFO officials thereby doing away with the need to print and manually sign COC application and certificate. Though some improvements are reported in this area with the increased digitalization of services through 2020-21 and sharing of FAQs across staff of the EPFO, companies have raised the issues of challenges related to obtaining COCs for foreign national employees from the EPFO in India and to claim Provident Fund benefits into employees' bank accounts outside India. Recommendations to improve systems include further digitization and facilitating consultative processes to take feedback from users of the systems, including companies and workers' representative organizations, to bridge the gaps and smoothen the processes.

The changes in the notion of an international worker over the years has created some confusion that needs communication and clarity amongst all concerned. The most recent change, implemented through a circular in 2017 which treated Indian international workers as domestic workers upon return and no longer subject to stringent regulations as foreign workers, subsumed the principle of equality for reciprocity.

EU countries report facing difficulties in receiving timely responses to requests and some report that the SSA is not working so well in reality. This includes difficulties in obtaining information related to COCs issued, the actual copies of the COCs, annual statistics, information needed to calculate pensions etc. Indian authorities report that some of this information is now available online and can be accessed by the counterpart authorities in other countries. However, the need for regular and improved communication between the two sides cannot be overstated and more resource allocation towards new avenues for such communication may be beneficial.

# 2. Introduction

# 2. Introduction

In 2020, the number of international migrants in the world reached an estimated 281 million, 60 million more than in 2010. International migrants comprise 3.6 per cent of the global population now, compared to 2.8 per cent in the year 2000. India has emerged as the leading country of origin for immigrants across the world, with 17.5 million international migrants in 2020 coming from India, up from 15.9 million in 2015. Europe remains the most preferred destination for global migrants. In 2020, Europe hosted the largest number of international migrants (87 million) in the world. Within Europe, Germany hosted the second largest number of migrants worldwide (around 16 million) in 2020.[1]

Though India remained the top country of origin of international migrants, the number of migrants living in India saw a slight decline from 5.24 million in 2015 to an estimated 4.88 million in 2020 – 0.4 percent of the total population of the country.[1]

Of the total number of international immigrations in 2020, 207 million international migrants, equivalent to 73 per cent of the global migrant population, were between the ages of 20 and 64 and likely to be workers. In Europe, more than three quarters of international migrants were of working age.[1]

As more people around the world move across borders, they may potentially lose their rights to social security benefits in their countries of origin due to their absence in those countries and may simultaneously not be able to enjoy full social security benefits in their destination country due to their short-term presence in those countries. Access to continued social security therefore becomes critical for such migrant employees. The importance of social security coverage is currently even greater as the world copes with the coronavirus disease (COVID-19) pandemic.

Globally, bilateral SSAs between countries are used to ensure the maintenance of continued social security rights for such migrant or globally mobile employees.

In terms of intra-EU mobility (mobility within the EU), there is a long history of coordination of social security systems among the members of the EU, which aims at preventing, as far as possible, the loss of social security rights for persons who move from one Member State to another, thereby facilitating the free movement of citizens. The framework linking national social security systems was extended on 24 November 2010 to third-country nationals through Regulation (EU) No 1231/2010, widening the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to those who were not covered solely on grounds of their nationality. Social security rights acquired in the Member State would therefore be preserved for such third-country nationals.

Bilateral SSAs between EU Member States and third countries continue to remain the more popular agreements for external coordination of social security systems. EU Member States currently have more than 350 bilateral agreements with third countries.[2]

Until 2008, India did not have any mandatory social security coverage for foreign employees working in India. In 2008, India implemented mandatory social security

1. United Nations International Migrant Stock 2019
2. Melin, Pauline. 'Member States' Social Security, 2018, Vol. 20 (2): 173–87. https://doi.org/10.1177/1388262718771786.

contributions for international workers in India. Since then, India has signed SSAs with 20 countries, of which 19 continue to be in force. Of these 19 countries, 12 are EU Member States.[3]

Thus, from 2008 onwards, the movement of people between India and EU Member States has been supported by many bilateral SSAs.

## Rationale for the study:

At the 13th India–EU summit in Brussels in 2016, the India–EU Agenda for Action 2020 was endorsed as a common roadmap to guide and strengthen the strategic partnership between the EU and India. This included the establishment of the Common Agenda on Migration and Mobility (CAMM) as a framework for cooperation on migration.

To take this forward, the EU is supporting the International Labour Organization (ILO) and the International Centre for Migration Policy Development (ICMPD) in the implementation of a technical project to support the India–EU CAMM and the EU-India High Level Dialogue on Migration and Mobility (HLDMM). The project is being implemented in partnership with the India Centre for Migration (ICM). The overall objectives are to contribute to better governance of migration and mobility between the EU and India, as well as to prevent and address the challenges related to irregular migratory flows.

**The CAMM follows a four-pillared structure:**

**Pillar 1:**

Better organizing and promoting of regular migration at relevant skill levels and fostering well-managed mobility, including the enhanced issuance of visas;

**Pillar 2:**

Preventing and combating irregular migration and addressing trafficking in human beings;

**Pillar 3:**

Maximizing the developmental impact of migration and mobility, including through cooperation on social security issues between India and the EU Member States; and

**Pillar 4:**

Promoting international protection, in line with the respective obligations of the signatories.

It is under the aegis of Pillar 3 that this study aims to understand whether SSAs between India and EU member states have been effective.

The first bilateral SSA between India and an EU Member State was signed with Belgium. It came into force in 2009. With more than a decade having passed since this first SSA came into force, a review to assess the efficiency and effectiveness of these SSAs was considered valuable.

This report seeks to investigate the adequacy of policy and the effectiveness of the coordination programme that circumscribes SSAs between three EU Member States (France, Germany and the Netherlands) and India. These SSAs have been selected for their unique features; studying them ensures a comprehensive review of the different terms of SSAs.

3. Notification no. G.S.R. 705(E) and 706(E) dated 1 October 2008

This report will look at the substantive aspects of the SSAs from the perspective of a social protection policy for migrants and the prospects for future reform, and will also investigate the operational elements of implementation, with a view to improving standards and processes for more effective implementation. Conclusions will include recommendations that might be mutually beneficial and can best meet the emerging challenges to address the multifaceted issues associated with India–EU mobility in the future.

## Methodology:

The study attempted to follow a mixed-method approach to expand and strengthen findings and conclusions. It is focused on globally mobile employees, thereby referring to workers who move for relatively short assignments (1–2 years) and not long-term migrant workers.

Primary data was sourced through a survey in which companies were asked to comment on the effectiveness of SSAs between India and various EU Member States. The 21 companies that participated in the survey have a large population of globally mobile employees who are assigned to India and to EU Member States with which India has entered into SSAs.

All companies surveyed had Indian employees assigned to work in either one or more of the three Member States - Germany, France and the Netherlands. At least 16 of these companies also had Indian employees assigned to other EU Member States.

**Secondary data research included:**

1. detailed technical study of the three selected SSAs entered into by India with France, Germany and the Netherlands and the impact of these SSAs on mobility between India and these countries;
2. analysis of data relating to cross-border trade, migrant workers, number of certificates of coverage issued, and so on;
3. analysis of international standards and best practices relating to social security for migrant workers; and
4. SSAs between India and other EU Member States to supplement the technical analysis and benefits of various agreements.

## Limitations:

The scope of this study was limited to the social security practices in India, France, Germany and the Netherlands. Also, the scope was generally limited to employment in the organized sector as the SSAs entered into by India cover the Provident Fund Act, related schemes and other legislation providing for old age pension, survivor pension and permanent and total disability pension in the organized sector.

Attempts to reach employees directly were not successful to a large extent as, in most cases, the COC process was handled by the employer, with limited involvement from the employees.

# 3. Need for SSAs

# 3. Need for SSAs

Globally, mobile employees face various challenges regarding their social security benefits. The employee is often required to make social security contributions in the destination country even though the project for which they have been sent may require staying in the destination country for only a limited period of time (1–2 years). Depending on the national social security legislation of the destination country, the employee may not be able to accrue social security benefits, so they are likely to instead accumulate and draw social security benefits in their country of origin. However, given that they are working in the destination country, they are required to contribute towards social security in the destination country. In some cases, employees may also need to continue social security contributions in their country of origin, while working in the destination country. This leads to dual social security contributions for both employers and employees. In the absence of a SSA, there is no option to claim an exemption from dual social security contributions.

**The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes the following nine branches of social security and establishes worldwide agreed minimum standard for them.**

- **Medical Care**
- **Sickness Benefit**
- **Unemployment Benefit**
- **Old-Age Benefit**
- **Employment Injury Benefit**
- **Family Benefit**
- **Maternity Benefit**
- **Invalidity Benefit**
- **Survivors' Benefit**

In almost all countries, the payment of benefits, except for employment injury benefits, is conditional upon a qualifying period of contributions, employment or residence. While the qualifying periods tend to be relatively short for short-term benefits, they can be significantly longer (up to 15 years or more) for long-term benefits. As a result, migrant workers risk losing their entitlement to benefits if they do not accrue the required periods of coverage in each country. For example, in India, for international workers not covered under a SSA, benefits from the Employees' Pension Scheme (EPS) are due only after a contributory period of ten years. If an international worker makes contributions under the EPS for less than ten years, no benefit is due to them under the scheme.

In this respect, bilateral and multilateral SSAs are essential in ensuring that periods of employment in other signatory countries are taken into account in granting the right to benefits that are conditional upon the completion of a qualifying period. Many countries allow migrant workers to accumulate social security rights only when bilateral or multilateral SSAs have been concluded with the workers' country of origin.

Another challenge faced by globally mobile employees is the lack of exportability of social security benefits from the destination country. In cases where globally mobile employees make social security contributions in the destination country, they may no longer be allowed to claim social security benefits in their country of origin. Most countries make the export of benefits abroad dependent on the ratification of international conventions or the conclusion of SSAs with the countries of residence in order to control the ongoing entitlement to benefits of insured persons. For example, in India, benefits from the Employees' Provident Fund (EPF) scheme and the EPS are only delivered in Indian bank accounts (unless employees are covered under SSAs). SSAs help to bridge this gap.

**Since these principles of nationality and territoriality are inherent features of all national legislations but because they lead to disadvantages for migrant workers, the ILO promotes standards of social security coordination along the following key principles:**

1. **Equality of treatment:** equal treatment and non-discrimination, including between nationals and non-nationals;
2. **Detachment:** social security rights governed at any given point by the applicable legislation of one country only;
3. **Totalization:** maintenance of acquired rights for the acquisition of a benefit;
4. **Exportability:** maintenance of rights in the course of acquisition and payment of benefits to beneficiaries residing abroad; and
5. **Administrative assistance:** assistance to persons covered and between signatories with a view to facilitating the application of the respective agreements.

**Social security-related challenges faced by globally mobile employees:**

- unequal treatment or discrimination
- no exemption from social security contribution in the destination country
- no benefit for short span of contributory period in the destination country
- no exportability of benefits from the destination country
- administrative hurdles to accessing social security

# 4. What is a SSA

# 4. What is a SSA

SSAs are mostly bilateral instruments that 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 and the members of their families from receiving benefits under the systems of any of the countries in which they have worked.[4] They generally provide for avoidance of double social security coverage (or no social security coverage) and equality of treatment with the host country workers.

**SSAs could be comprehensive or limited and full or partial:**

- When an agreement covers all social security branches of both countries as generally applicable to migrant employees, it can be seen as a "full" agreement. Where only limited social security branches are covered, it can be seen as a "partial" agreement. From this perspective, while the agreement between India and the Netherlands is full, as it covers all branches of Indian and Dutch social security as generally applicable to migrant employees, the agreements entered into by India with Germany and France are partial, as not all branches of German and French social security are covered under the agreements.
- When an agreement covers all the relevant principles relating to social security coverage of employees (equality of treatment, exemption, totalization, exportability, and administrative assistance), it can be seen as a "comprehensive" agreement. A "limited" agreement covers only specific principles relating to social security coverage of employees. For example, the SSA that was entered into between Germany and India in October 2008 was a limited one. It was later substituted with a comprehensive SSA that was signed on 12 October 2011 and that entered into force on 1 May 2017, which included exportability and totalization of pension-related benefits. The SSA with the Netherlands does not provide for totalization of benefits.

Most SSAs are bilateral, involving two countries. However, there are some notable examples of multilateral agreements to which many countries are party. These include, in particular, the regulations of the EU that coordinate the social security systems of the 27 EU Member States, the Agreement on the European Economic Area (EEA) and the EU–Switzerland Agreement. The basis for these later agreements is linked to extending the EU's internal market (for the EEA) and is pursuant to the agreement of free movement with Switzerland. All SSAs between India and the EU are bilateral agreements with individual Member States.

Multilateral agreements, though they may require multiple EU Member States to agree on common principles of social security coordination, ensure better coordination between countries and remove the ambiguity involved in implementing multiple bilateral agreements.

**Features of SSAs:**

- coordinate the social security schemes of two or more countries
- could be either comprehensive or limited
- could be either partial or full
- could be either multilateral or bilateral

4. Hirose, Kenichi; Nikac, Milos; Tamagno, Edward (2011): Social security for migrant workers : a rights-based approach, ILO DWT and Country Office for Central and Eastern Europe.

# 5. Social security applicable legislation for international workers in India

# 5. Social security applicable legislation for international workers in India

The Directive Principles of State Policy as mentioned in the Constitution of India are the source of social security legislation in India.

**The Directive Principles require the State to, inter alia:**

1. secure a social order for the promotion of welfare of the people (Article 38);
2. within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want (Article 41); and
3. make provision for securing just and humane conditions of work and for maternity relief (Article 42).

**Social security in India for the organised sector is covered under the following legislation:**

1. **The Employees' Compensation Act, 1923:** This Act enables an employee in the case of injury and his/her dependents in the case of his/her death to claim compensation at the cost of the employer organization for such employment injury/death. The Act is applicable to workers employed in any capacity as per Schedule II of the Act.
2. **The Employees' State Insurance Act, 1948:** This Act provides workers with not only accident benefits but also other benefits, such as sickness benefits, maternity benefits and medical benefits. The Act is applicable to persons employed for wages up to 21,000 Indian rupees per month.
3. **The Employees' Provident Funds & Miscellaneous Provisions Act, 1952:** There are three schemes under this Act – the Employees' Provident Funds (EPF) scheme, the Employees' Deposit-Linked Insurance Scheme, 1976 (EDLI), and the Employees' Pension Scheme (EPS). This Act is applicable to any establishment employing 20 or more employees. For establishments employing less than 20 employees, coverage under this Act is voluntary. However, once an establishment with less than 20 employees is voluntarily covered under the Act, all rules under the Act and the three schemes are applicable to it.
4. **The Maternity Benefit Act, 1961 (amended in 2017):** This Act entitles a woman employee to 26 weeks of paid maternity leave from the employer.
5. **The Payment of Gratuity Act, 1972:** Under this Act, at the time of termination of employment, after completion of a minimum of five years of service, for every completed year of service or part thereof in excess of six months, the employer is required to pay lump sum gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn.
6. All other Acts which have reference to old-age and survivor's pension for employed persons and permanent and total disability pension for employed persons including the Employees Compensation Act, the Coal Mines Provident fund and Miscellaneous Act (1948), Personal injuries Act (1963), the Cine-worker welfare fund (1984), Banking regulation Act (1949) etc.
7. In 2020, the Government of India, introduced a Code on Social Security (not in force as yet).

The Code on Social Security subsumes existing 9 Acts, dealing with Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' Pension Scheme, Employees Deposit Link Insurance Scheme, The Employees' State Insurance, Employees' Compensation, Employment Exchanges, Maternity Benefit Act, Cine-Workers Welfare Fund Act, The Building and Other Construction Workers Cess Act and The Unorganised Workers' Social Security Act.

Some salient features of the code which would have bearing for consideration of social security agreements include:

- **Extending the reach of Employers State Insurance** to provide right to health security including linking unorganised sector, platform workers/gig workers, plantation workers, those working in the hazardous industry, and optionally for establishments with less than ten workers.
- **Extending the reach of EPFO to include coverage to** all establishments having 20 workers and optionally for those having less than 20 workers as well as to the self-employed category or any other category under the aegis of EPFO.
- Provision for Gratuity has been made **Fixed Term Employee** and there would not be any condition for minimum service period for this.
- Simplified registration procedure for all unorganised sector workers through an online portal.

While all other social security laws in India either have limited applicability (such as Employees' State Insurance) or have limited benefits available to employees from the employer in certain situations (such as Employees' Compensation, Maternity Benefit and Gratuity), the EPF has wider coverage and benefits for employees.

The SSAs entered into by India with EU Member States cover the three schemes under the PFS Act: EPF, EPS and EDLI administered by the Employees' Provident Fund Organisation (EPFO) and other legislation providing for old age pension, survivor pension and permanent and total disability pension. These Acts do not cover self-employed individuals. In fact, there is no mandatory social security scheme for self-employed individuals in India.

Until November 2008, there were no special rules for Provident Fund coverage applicable for foreign national employees working in India. As per the general rule, an employee working in India with a salary exceeding a certain threshold (15,000 rupees, equivalent to approx €183) was not required to mandatorily join the EPF scheme and the EPS. Availing the benefit of this general rule, foreign passport-holder employees sent to work in India were not contributing under the PF Act in India. As foreign employees were not subject to the Indian social security system and there was no compulsory social security coverage for foreign employees in India, no country had entered into a SSA with India.

However, effective 1 November 2008, special rules for international workers were introduced in the EPF scheme and the EPS.[5] An international worker is defined as a foreign national (non-Indian passport holder) working in India or, in certain cases, an Indian worker who has divided his/her career between India and another country with whom India has entered into a bilateral social security agreement. International workers also include Overseas Citizens of India (OCIs) who hold non-Indian passports. Thus, effective 1 November 2008, all foreign passport-holder employees working in India were made members under the PF Act.

5 Notification no. G.S.R. 705(E) and 706(E) dated 1 October 2008

There is no exclusion for international workers on the basis of the salary threshold that is otherwise available for domestic workers in India. Also, while domestic workers are required to contribute towards the Provident Fund in India on salaries up to a certain threshold, there is no limit on salaries for the calculation of contributions for international workers. Further, for international workers, contributions towards the Provident Fund in India must be made on full monthly pay comprising basic salary and all cash allowances except house rent allowance and other specified components. The only way an international worker is excluded from the EPF scheme and the EPS is if India and the worker's country of origin have entered into a SSA or a bilateral comprehensive economic agreement and the employee is contributing to the social security scheme of his/her country of origin while he/she is working in India.

In 2008, when special provisions for international workers were first introduced, these workers could claim full lump-sum withdrawal from the EPF scheme on completion of their Indian employment. Thus, while there were mandatory Provident Fund contributions for international workers, they were allowed full withdrawal along with interest on leaving India. In 2010 however, the rules were revised and made more stringent.[6] International workers can now claim Provident Fund withdrawal only on retirement after attaining 58 years of age. Through another amendment in 2012,[7] early Provident Fund withdrawal on termination of Indian employment was permitted if India and the international worker's country of origin have entered into a SSA.

An amendment to the EPS in September 2014[8] excludes from the scheme all new employees joining for the first time and earning monthly pay exceeding a certain threshold (15,000 rupees per month). For such employees, full contribution will go to the EPF scheme[9].

**Provident Fund rules for international workers:**

- **Coverage:** mandatory for all unless excluded under SSA
- **Contributions:** 24 per cent of monthly pay by employer (covering basic salary[10] and all cash allowances); employer can recover a maximum of 12 per cent from the employee
- **Benefit:** on retirement after attaining 58 years of age; early withdrawal available only if covered under the SSA

6 Notification no. G.S.R. 148 dated 3 September 2010
7 Notification no. G.S.R. 744 (E) dated 5 October 2012
8 Notification no. G.S.R. 609 (E) dated 22 August 2014
9 Prior contribution of employer was divided between EPF, EPS and EDLI at the rate of 3.67, 8.33 and 0.5 percent respectively
10 Basic salary includes all emoluments earned while on duty or on leave/holiday except for the cash value of food concessions, dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable in respect of employment and any presents made by the employer. The Government of India Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 2(b).

# 6. India's network of SSAs

# 6. India’s network of SSAs

The first SSA was signed by India on 3 November 2006 with Belgium. However, the agreement with Belgium came into force almost three years later, on 1 September 2009. Since then, India has signed SSAs with 20 countries, of which agreements with 19 countries continue to be in force. (The agreement signed by India and Brazil is not yet in force.) All the SSAs entered into by India so far have been bilateral.

Of the 19 countries with which India has operational SSAs, 12 agreements are with EU Member States. It should be noted that the last agreement signed by India with an EU Member State was in March 2013 with Portugal. Since then, no new SSA has been signed by India with any EU country.

**Below is the list of SSAs signed by India with EU Member States and non-EU countries:**

| S. No. | Countries | Date of signing | Date of entry into force |
|---|---|---|---|
| **EU Member States** | | | |
| 1 | Belgium | 03 Nov. ’06 | 01 Sep. ’09 |
| 2 | Denmark | 17 Feb. 10 | 01 May. ’11 |
| 3 | Luxembourg | 30 Sep. 09 | 01 June ’11 |
| 4 | France | 30 Sep. 08 | 01 July ’11 |
| 5 | The Netherlands | 22 Oct. ’09 | 01 Dec. ’11 |
| 6 | Hungary | 02 Feb. ’10 | 01 Apr. ’13 |
| 7 | Finland | 12 June ’12 | 01 Aug. ’14 |
| 8 | Sweden | 26 Nov. ’12 | 01 Aug. ’14 |
| 9 | The Czech Republic | 09 June ’10 | 01 Sep. ’14 |
| 10 | Austria | 04 Feb. ’13 | 01 July ’15 |
| 11 | Portugal | 04 Mar. ’13 | 08 May ’17 |
| 12 | Germany | 12 Oct. ’11 | 01 May ’17 |
| **Non-EU countries** | | | |
| 13 | Switzerland | 03 Sep. ’09 | 29 Jan. ’11 |
| 14 | South Korea | 19 Oct. ’10 | 01 Nov. ’11 |
| 15 | Norway | 29 Oct. ’10 | 01 Jan. ’15 |
| 16 | Canada | 06 Nov. ’12 | 01 Aug. ’15 |
| 17 | Australia | 18 Nov. ’14 | 01 Jan. ’16 |
| 18 | Japan | 16 Nov. ’12 | 01 Oct. ’16 |
| 19 | Quebec | 26 Nov. ’13 | 01 Apr. ’17 |
| 20 | Brazil | 16 Mar. ’17 | Not yet in force |

India had signed a limited SSA with Germany on 8 October 2008, which entered into force on 1 October 2009. This limited agreement only covered provisions relating to the exemption benefit. The limited agreement was replaced with a comprehensive SSA that was signed on 12 October 2011 and entered into force on 1 May 2017. The comprehensive SSA between India and Germany covers all benefits, such as exemption, totalization of period and exportability of benefits.

All other agreements signed by India with EU Member States are comprehensive and cover all principles. The only exceptions to this is the agreement with the Netherlands which do not provide totalization of period.

# 7. Coordination of social security systems with EU

# 7. Coordination of social security systems with EU

## Intra-EU mobility

Within the EU, Regulation (EC) No. 883/2004[11] is the basis for the coordination of social security systems. It provides rules for coordination of Member States' social security systems to ensure free movement of persons and improve their standard of living and conditions of employment through the principles of equality of treatment, aggregation of periods, determination of applicable legislation, waiving of residence clauses and special provisions for various categories of benefits. Further, Regulation (EC) No. 987/2009[12] lays down the procedure for implementing Regulation No. 883/2004 for the coordination of social security systems. It recognises that closer and more effective cooperation between social security institutions is a key factor enabling persons to access their rights as quickly as possible and under optimum conditions. Since 2010, Regulation (EU) No. 1231/2010[13] has extended the benefits of the above-mentioned regulations to nationals of third countries not already covered by them. It recognises the need for better integration of nationals of third countries who are legally residents of the territories of the Member States and whose situation is not confined into one single Member State and gives them uniform rights which match as closely as possible to those enjoyed by citizens of the union.

**A "fitness check" report[14] issued on 29 March 2019 that examined the EU legislation on legal migration reinforced the fact that the EU rules on the coordination of social security interact with legal migration rules in various ways:**

1. They identify the branches of social security to be covered by the relevant equal treatment provisions in the legal migration directives; and

2. The regulation extending the scope of the social security coordination rules to third-country nationals, allows these mobile third-country nationals to benefit from the EU social security coordination rules when they move between Member States

## External-EU mobility

Outside the EU, social security coordination between EU Member States and third countries is possible through a bilateral agreement between an individual Member State and a third country. Despite upholding the right to equality amongst workers in the area of social security, concluding SSA agreements with a third country, is not an area where the EU has exclusive competence.[15]

11 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), Pub. L. No. 32004R0883, 166 OJ L. Accessed 29 July 2020. http://data.europa.eu/eli/reg/2004/883/oj/eng.

12 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), Pub. L. No. 32009R0987, 284 OJ L. Accessed 29 July 2020. http://data.europa.eu/eli/reg/2009/987/oj/eng.

13 Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, Pub. L. No. 32010R1231, 344 OJ L. Accessed 29 July 2020. http://data.europa.eu/eli/reg/2010/1231/oj/eng.

14 Santos, Fabricio. 'Legal Migration Fitness Check'. Text. Migration and Home Affairs - European Commission, 13 February 2017. https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en.

15 EUR-Lex (2016): Division of Competencies within the European Union. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=LEGISSUM:ai0020.

EU Member States remain competent to determine the scope of insured persons, the types and levels of benefits, and the obligations of the beneficiaries and procedures for the entitlement of social security rights.[16] Bilateral social security negotiations remain the competency of the individual Member State. There are a few exceptions where EU-wide agreements are in place with third countries that include provisions on social security. These include (by order of date):

- The Association Agreement with Turkey (1963)
- The Agreement on Cooperation and Customs Union with San Marino (1991)
- EU–EEA Agreement (1994)
- EU–Switzerland Agreement (1999)
- The Euro–Mediterranean Association Agreements with Tunisia (1997), Palestine (1997), Israel (2000), Morocco (2000), Jordan (2002), Egypt (2004), Algeria (2005), Lebanon (2006)
- The Stabilization and Association Agreements with Balkan countries (2015)

Amongst these, full social security coordination is provided only in the agreements with the EEA and Switzerland. The basis for these decisions is linked to extending the EU’s internal market (for the EEA) and is pursuant to the agreement of free movement with Switzerland.[17]

There is a very limited social security coordination in the other agreements; they mainly provide for export of pensions and some of them include equal treatment. The more recently concluded agreements do not provide for any coordination of social security, like the Association Agreements signed with Moldova and Ukraine in 2014, replacing the previous Partnership and Cooperation agreements of 1994. There are however some notable features, for example in the Euro–Mediterranean Agreement with Morocco.

**Social security in the Euro–Mediterranean Agreement with the Kingdom of Morocco[18]**

**Article 65**

1. Workers of Moroccan nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality relative to nationals of the Member States in which they are employed. The concept of social security shall cover the branches of social security dealing with sickness and maternity benefits, invalidity, old-age and survivors’ benefits, industrial accident and occupational disease benefits, and death, unemployment and family benefits.

2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old-age, invalidity and survivors‘ benefits and family, sickness and maternity benefits and also for that of medical care for the workers and for members of their families resident in the Community.

16 ILO DWT and Country Office for Central and Eastern Europe. Social Security Coordination for Non-EU Countries in South and Eastern Europe: A Legal Analysis. Budapest: ILO, 2012.

17 ‘Social Security Cover in Other EU Member States | Fact Sheets on the European Union | European Parliament’. Accessed 29 July 2020. https://www.europarl.europa.eu/factsheets/en/sheet/55/social-security-cover-in-other-eu-member-states.

18 EUE-Lex (2000): Official Journal OJ L 70, 18.3.2000, p. 2–204. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22000A0318%2801%29

3. The workers in question shall receive family allowances for members of their families who are resident in the Community.

4. The workers in question shall be able to transfer freely to Morocco, at the rates applied by virtue of the legislation of the debtor Member State or States, any pensions or annuities in respect of old age, survivor status, industrial accident or occupational disease, or of invalidity resulting from industrial accident or occupational disease, except in the case of special non-contributory benefits.

5. Morocco shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in paragraphs 1, 3 and 4.

With the purpose of reducing the disparities between the approaches of the EU and the Member States, the EU in 2012 proposed adopting a common approach towards social security coordination with third countries via a communication on “the External Dimension of EU Social Security Coordination”.

This communication, in its introduction, stated that the national approach of Member States concluding bilateral agreements with third countries is “patchy” and done without consulting each other, resulting in an “incomplete network of agreements which tend to have differing content from country to country” and emphasized the need for a common EU approach to be developed when concluding social security coordination agreements with third countries.[19]

The European Economic and Social Committee in 2012 also adopted an opinion for EU agreements to be concluded with third countries and regional organisations with inclusion of bilateral clauses of social security in future trade or economic partnerships, highlighting that better coordination on social security would avoid double contributions, benefitting worker mobility and therefore business competitiveness.[20] This included mention of India through the reference to ‘BRIC’ countries of which India is a member.

The European Parliament, in a resolution on the integration of migrants, its effects on the labour market, and the external dimension of social security coordination in 2013, also called for the adoption of a uniform and reciprocal EU approach to social security coordination vis-à-vis third countries, covering all EU citizens and third-country nationals. It stated that it “will be impossible for individual Member States to conclude reciprocal bilateral social security agreements with all third countries, and seeking to do so would result in a fragmented system with inequalities in the treatment of EU citizens”, and suggested that “action at European level is therefore necessary.”[21] It would also serve to protect the rights of all EU citizens in a third country and would mean equality amongst EU citizens living and working in the third country.

Despite the call for the EU to “negotiate and sign international agreements offering fuller bilateral or multilateral protection than the bilateral (Member State) agreements”,[22] analysis of legal provisions under Treaty on the Functioning of the European Union (TFEU) indicates that an EU agreement with third countries on social security would be very doubtful as this would be legally difficult to achieve.[23]

19 European Commission (2012): Communication from the Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions: The External Dimension of EU Social Security Coordination, Brussels

20 European Economic and Social Committee (2012): Plenary Session, on 14 And 15 November 2012, Summary Of Opinions Adopted, Brussels 30 November 2012

21 European Parliament resolution of 14 March 2013 on the integration of migrants, its effects on the labour market and the external dimension of social security coordination

22 European Economic and Social Committee (2016), Coordination of social security schemes between the European Union and Euromed countries, pp 25

23 Melin, Pauline (2019): The External Dimension of EU Social Security Coordination: Towards a Common EU Approach, Brill.

# 8. Analysis of SSAs between India and EU Member States

# 8. Analysis of SSAs between India and EU Member States

## A. Relevant authorities

In all the SSAs between India and EU Member States, there are two levels of authorities involved – the competent authority and the competent institution.

From an India perspective, the competent authority is the Ministry of External Affairs and the competent institution is the EPFO (under the Ministry of Labour and Employment).

**The role of the competent authority is to:**

a. negotiate the terms of SSA with the other country;

b. enter into an administrative arrangement to implement the SSA;

c. communicate with the authorities of the other country for any purpose;

d. agree with the competent authority of the other country to allow exemption benefit for an extended period beyond the original period as specified in the SSA; and

e. agree with the competent authority of the other country to allow exceptions to the exemption clause in specific cases.

**The role of the competent institution is to:**

a. issue COCs under the exemption clause of the SSA;

b. agree with the competent institution of the other country to allow exemption benefit for an extended period beyond the original period as specified in the SSA;

c. agree with the competent institution of the other country to allow exceptions to the exemption clause in specific cases;

d. pay social security benefits in the other country by applying provisions relating to export of benefits; and

e. calculate social security benefits by applying provisions relating to totalization of periods.

Thus, for employers and employees, the relevant authority for payment of contributions, claim of benefits, and application for COCs is the competent institution (the EPFO in India).

Points that overlap between the competent authority and the competent institution can be handled by either.

- **competent authority:** Ministry of External Affairs
- **competent institution:** EPFO (under the Ministry of Labour and Employment)

## B. Legislations covered

From an India perspective, in all SSAs between India and EU Member States, the following benefits are covered:

a. old-age and survivor's pension for employed persons

b. permanent total disability pension for employed persons

It may be noted that the applicable Indian social security legislation, under all the SSAs entered into by India with EU Member States, cover only employed individuals.

While employed individuals working for employers not covered under the PF Act (where the employer has less than 20 employees in India and decides not to participate) may not be able to maintain social security coverage in India when such Indian employees work in EU Member States, they may claim exportability of benefits from the EU Member States provided for under the SSA.

From the perspective of EU Member States, SSAs with India may cover various branches of social security laws. Some SSAs cover all branches of social security while some cover only a few of them. In case a SSA covers only a few branches of the social security laws of the other country, an employee for whom a COC is obtained in India will be exempt from only such branches. This means that an Indian employee who goes to the EU Member State with an Indian COC will still be required to contribute towards the branches of the social security scheme of that country that are not covered under the SSA.

- SSAs that cover all branches of the social security scheme of the other country (full exemption): Belgium, the Netherlands, Luxembourg, Denmark, Hungary, Austria
- SSAs that cover a few branches of the social security scheme of the other country (partial exemption): France, Germany, Finland, Sweden, The Czech Republic

## C. Persons covered

Generally, all SSAs between India and EU Member States cover any person who is or has been subject to the legislation of either of the contracting states and other persons who derive rights from such persons. Thus, they cover nationals of both countries who are covered under either country's social security scheme as well as dependents of covered persons. It may be noted that persons covered under the SSAs can be both employed and self-employed individuals. However, as the Indian PF Act does not cover self-employed persons, reciprocity for self-employed individuals is not possible.

## D. Social security coverage – general provision and exemption (Determination of the applicable legislation)

All SSAs between India and EU Member States provide that an employee who moves between countries shall be subject to the social security scheme of the origin country. This is the detachment clause of the SSAs, which provides an exception to the general principle and allows continuous social security coverage under the social security scheme of the country of origin and exemption from the social security scheme of the destination country during the period of assignment, subject to certain conditions.

In such cases, exemption from social security contribution in the Member State is based upon a COC obtained from the EPFO in India, confirming continued social security coverage of the employee in India.

- **General provision:** social security coverage in the destination country where the employee is working
- **Detachment provision:** social security coverage in the country of origin subject to certain conditions

However, there are significant variations in the detachment-related conditions in the various SSAs entered into by India with EU Member States. Study of the detachment clauses of these SSAs reveals variations in the following:

a. employer for whom the employee should work in the destination country – whether the employer is in the country of origin or in the destination country

b. limitation on the period of assignment versus limitation on the period of exemption

c. period for which exemption will be allowed

**Exemption benefit – employer for whom the employee should work in the destination country**

SSAs specify the employer for whom the employee should work in the destination country to avail the exemption benefit. Exemption rules in SSAs can be divided into the following categories:

- **Category 1:** These SSAs provide the exemption benefit only where the employee works in the destination country on behalf of an employer in the country of origin. The SSAs entered into by India with Belgium, Luxembourg, France, Germany, the Netherlands, Sweden, Austria and Portugal are of this category.
- **Category 2:** These SSAs provide the exemption benefit even where the employee works in the destination country on behalf of an employer in the destination country itself. There are various ways in which SSAs allow this:
    - The SSAs entered into by India with Denmark, The Czech republic and Hungary consider an employer in the country of origin and an affiliate or subsidiary company of the said employer in the destination country as one and the same.
    - The SSAs between India and Finland allows the detachment benefit where the employee is seconded to a related entity in the destination country. The agreement however does not provide any definition for the related entity.
- **Category 3:** These SSAs do not clearly specify the employer for whom an employee should work in the destination country. An interpretation drawn for such SSAs is that the exemption benefit is available for any employee working in the destination country, irrespective of employer. The SSA between India and Canada has this clause. However, none of the SSAs entered into by India with EU Member States have a similar clause.

In general, whenever employees are sent to work in the destination country, they are assigned or seconded to a legal entity of the employer in this destination country. This legal entity in the destination country could be a group company, a subsidiary company, a holding company, an affiliate, a joint venture or a branch office of the employer entity in the country of origin.

Given the terms of the exemption clause in Category 1 SSAs, a practical issue arises for employees working in the destination country. Where employees are assigned by the employer in the country of origin to an affiliate or group entity in the destination country, it is unclear whether a COC is available to such an employee in the country of origin and whether an exemption from the social security scheme is available in the destination country.

| Category | Terms of SSAs | Countries |
|---|---|---|
| Category 1 | The employee works in the host country on behalf of the home country employer | Agreements with Belgium, Luxembourg, France, Germany the Netherlands, Sweden, Austria and Portugal |
| Category 2 | The home country employer and affiliate or subsidiary company are considered one and the same | Agreements with Denmark, The Czech Republic and Hungary |
| | The employee is seconded to a related entity | Agreement with Finland |
| Category 3 | The employer for whom the employee should work in the host country is not specified | Agreement with Canada; No EU Member States |

**Exemption benefit – limitation on the period of assignment versus limitation on the period of exemption**

SSAs either provide a limit on the period of assignment where the exemption benefit is available or simply limit the period for which such an exemption benefit is available.

The SSAs entered into by India with Finland, France and Germany provide limits on the period for which the exemption benefit is available even where the period of assignment is for longer durations. In such SSAs, the exemption benefit is available for up to a specific period, irrespective of the total assignment period. For example, the SSA between India and France provides an exemption benefit for a maximum duration of 60 months. Thus, where an Indian employee is assigned to France for six years, the exemption benefit is available for up to 60 months.

On the other hand, the SSAs entered into by India with Austria, Belgium, The Czech Republic, Denmark, Sweden, Hungary, Luxembourg, the Netherlands and Portugal provide a detachment benefit only if the assignment period is specified. For example, the SSA between India and the Netherlands provides the exemption benefit on the condition that the foreseeable duration of the assignment does not exceed 60 months.

Thus, if an Indian employee is sent to France for six years, the exemption benefit is available for the initial five years. However, if an Indian employee is sent to the Netherlands for six years, no exemption benefit is available.

**SSAs provide either of the following restrictions:**

- period of detachment :
    - where exemption is available for up to a specific period irrespective of the total assignment period
    - agreements with Finland, France and Germany
- period of assignment in which exemption will be available:
    - where exemption is available only if the assignment period is specified
    - agreements with Austria, Belgium, The Czech Republic, Denmark, Sweden, Hungary, Luxembourg, the Netherlands and Portugal

**Exemption – possible extension of benefits with detachment**

Generally, all SSAs entered into by India allow the exemption benefit for a period of five years. However, there are certain exceptions in some of the SSAs entered into by India with EU Member States.

The SSA between India and Germany allows an exemption benefit for up to four years with a possible extension of one year.

The SSA between India and Denmark provides a different period for Indian employees assigned to Denmark than the one provided for Danish employees assigned to India. For an Indian employee assigned to Denmark, the exemption benefit is available for five years. However, for a Danish employee assigned to India, the exemption benefit is available for three years.

The SSA between India and Sweden allows the exemption benefit for up to two years with a possible extension for a further two years.

- SSAs specify the period for which the exemption will be available
- Generally, all agreements allow the exemption benefit for a period of five years
- **Exceptions:**
    - agreement with Germany: five years + extension of three years
    - agreement with Denmark: for India outbound to Denmark, five years; for India inbound from Denmark, three years
    - agreement with Sweden: two years + extension of two years

**Exemption – assignment from third countries**

Some SSAs allow the exemption benefit to an employee even where the employee goes on assignment to the destination country from a third country.

For example, under the SSA between India and the Netherlands, a Dutch employee may come to India on assignment from the Netherlands or from a third country like the United States of America. However, to avail exemption from Provident Fund in India, the employee will need to obtain a COC from the Netherlands. The SSAs entered into by India with Austria, Germany, The Czech Republic, France, the Netherlands, Belgium, Denmark, Finland and Luxembourg have similar clauses.

According to German interpretation of the SSA, an Indian citizen who lives and works in Germany (on a residence permit) can also be detached to India and claim benefit from exemption from double social security contributions.

## Extension/exception to detachment

SSAs allow the exemption benefit for an extended period, beyond the original period as specified in the agreements, subject to mutual consent of competent authorities or competent institutions. All the SSAs between India and EU Member States have such a clause, except for those with The Czech Republic, France and Hungary.

However, all SSAs entered into by India with EU Member States allow competent authorities and competent institutions of both countries to grant an exception from the provisions relating to social security coverage in the interest of a particular employee or category of employees. This exception is subject to the condition that the employee(s) remain covered under the social security system of one country.

## Case Study:

- **Facts:**
  - Ms. B, a Dutch national, has been working in India from 1 January 2015 onwards. The expected duration of her assignment was initially five years. The assignment has been extended for one more year.
  - The SSA between India and the Netherlands provides an exemption benefit for five years.
  - Ms. B applied for a COC in the Netherlands for the initial five years.
- **Question:** Will Ms. B be eligible to obtain a COC for the extended one year?
- Under Article 7(2) of the SSA between India and the Netherlands, the competent authorities of the two countries may agree to an additional period of exemption. Thus, by mutual consent of the competent authorities of both countries, Ms. B can obtain a COC for the sixth year of her assignment and may thus benefit from the exemption benefit.

  - **Extension to exemption:** allow exemption benefit for an extended period beyond the original period as specified in the agreements; exceptions: agreements with The Czech Republic, France and Hungary
  - **Exception to exemption:** allow competent authorities and competent Institutions of both countries to allow exceptions in the interest of employee(s), on the condition of social security coverage in one country; valid for all EU Member States

## E. Totalization of period

All the SSAs entered into by India with EU Member States, except for the Netherlands, have provisions relating to totalization of period of service. In general terms, totalization of period allows an employee to add periods of service in the destination country and the country of origin to determine eligibility for benefits. Terms relating to totalization of period vary in each SSA.

**Totalization of period in third countries**

In some SSAs, totalization of period in third countries is allowed to determine eligibility for benefits on the condition that both countries have SSAs with the third country that allows totalization of period.

The SSAs with Austria, Germany, France, Luxembourg and Portugal allow such benefit of totalization of period in third countries.

**Minimum period of coverage to apply totalization benefit**

In some SSAs, where the period of coverage in one country is less than one year, the country is not required to apply totalization of period to determine eligibility for benefits.

The SSAs with Austria, The Czech Republic, France, Hungary and Portugal provide such a restriction.

**Totalization of prior period**

In all the SSAs entered into by India with EU Member States that allow the benefit of totalization, totalization of period prior to the entry into force of the SSA is specifically allowed. Thus, the service period in the country of origin prior to the entry into force of the SSA will also be added when determining the totalized service period to determine eligibility for social security benefits in either country.

**Case Study 1:**

- **Facts:**
  - Ms. C, a French national aged 58 years, has been working in India and has contributed towards the Provident Fund and the Pension Scheme in India for four years.
  - Prior to her Indian assignment, Ms. C worked in France for 25 years.
- **Question:** Will Ms. C be eligible for a monthly pension benefit in India on retirement?
- Under the totalization of period benefit clause of the SSA between India and France (Article 11), the time spent in both France and India will be aggregated to determine eligibility for monthly pension (that is, more than ten years).
- However, the calculation of monthly pension will be limited to the time spent in India (i.e. four years).

**Case Study 2:**

- **Facts:**
  - Ms. D, a Dutch national, has been working in India and has contributed towards the Provident Fund and the Pension Scheme in India for four years.
  - Prior to her Indian assignment, Ms. D had worked in the Netherlands for 25 years.
- **Question:** Will Ms. D be eligible for a monthly pension benefit in India on retirement?
- The SSA between India and the Netherlands does not allow the totalization of period benefit.
- Thus, Ms. D will not be eligible for monthly pension in India as her service is less than ten years in India.

  - Totalization of period allows an employee to totalize periods of coverage in the country of origin and the destination country to determine eligibility for benefits.
  - Totalization of period is not applicable in the SSA between India and the Netherlands.

## F. Exportability of social security benefits

All SSAs between India and EU Member States have provisions relating to export of benefit. In general terms, export of benefit allows an employee to receive social security benefits from the destination country in his/her bank accounts in the country of origin.

Terms relating to export of benefits vary in each SSA. However, practically, export of benefit is allowed under all SSAs entered into by India with EU Member States.

However, there are examples of exceptions. The Austria–India SSA states that the provision on the export of benefits does not apply to compensatory supplements and the France–India SSA excludes non-contributory benefits from being paid abroad[24].

**Case Study:**

- **Facts:**
  - Ms. E, a French national, was working at the liaison office of a French Company in India.
  - Ms. E did not obtain a COC in France and has been contributing towards Provident Fund in India.
  - After a few years, the Liaison Office was wound up and Ms. E was repatriated to France.
- **Question:** How will Ms. E withdraw her Provident Fund amount, as all bank accounts of the liaison office and of Ms. E in India were closed before she was repatriated to France?
- Under the export of benefits clause of the SSA between India and France (Article 5), Ms. E can get the Provident Fund amount directly remitted to her bank account in France.
  - **Export of benefits:** allows an employee to receive social security benefits from the destination country in his/her bank accounts in the country of origin.

## G. Equality of treatment

SSAs allow employees from an origin country to receive equal treatment to that received by nationals of the destination country through the application of social security legislation.

All SSAs between India and EU Member States contain a provision requiring countries to treat equally nationals and non-nationals with whose countries the Member State has signed a SSA. However, some SSAs, namely the Belgium–India SSA, the Netherlands–India SSA, the France–India SSA, the Luxembourg–India SSA and the Portugal–India SSA, provide that equal treatment is only for persons ordinarily resident in the contracting state granting them equal treatment.[25]

From the Indian perspective, there are special provisions under the EPF scheme and the EPS that apply to international workers.[26] International Workers are subject to certain stringent provisions compared to domestic workers with regard to coverage, contributions and benefits from these schemes. For example, Provident Fund contribution for domestic workers can be limited on monthly pay of 15,000 Indian rupees per month. However, for international workers, there is no salary ceiling and

---

24 Melin, "Member States' Social Security Agreements with India: Lessons for the future of a common EU approach

25 ibid."

26 An international worker is defined as (i) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to be gained, under the said agreement; and (ii) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies. (EPF Act 1952, 83/2 a,b)

contributions are required on full monthly pay covering all cash allowances. Until 2017, the definition of international worker, along with covering foreign national employees, also covered Indian national employees when they worked outside India in a country with which India has a SSA but where the Indian employee works without a COC from the EPFO in India. Thus, in certain circumstances, Indian employees may also qualify as international workers and special provisions for these international workers may not be seen as violative of the principle of equality of treatment.

However, on 23 June 2017, the EPFO issued a circular clarifying its position on the definition of international worker for Indian employees. The circular states that Indian employees who return to work in India after having worked in another country with which India has a SSA will not be considered international workers for Provident Fund purposes. Thus, while Indian employees will not be considered international workers upon their return to India and will not be subject to the stringent provisions that are applicable to international workers, foreign national employees are considered international workers and these stringent Provident Fund and pension rules apply to them. The equality of treatment has thus been subordinated by the SSA agreements entered into by India, by providing for reciprocity. This is permitted and in line with international legislation.

A counterargument to this is that contributions towards social security of Indian workers in other countries are calculated based on their full salary and not on a fixed limit. Equality, however, is measured in terms of equal treatment of international workers vis-à-vis domestic workers in India, and in this respect the SSAs are reciprocal, but not equal.

## H. Self-employed individuals

In all the SSAs entered into by India with EU Member States, both employed and self-employed individuals are covered. However, as noted, India does not have any mandatory social security scheme for self-employed individuals. Thus, only those individuals who are employed under companies that are covered by the applicable India legislation are included under the SSAs. This also means that EU nationals who work as self-employed individuals in India and who do not qualify as “employees” under the PF Act are not subject to any social security coverage in India.

As per the general principle of social security coverage (determination of the applicable legislation) in the SSAs between India and EU Member States, a person who is self-employed shall be subject to social security legislation of the destination country. SSAs entered into by India with Germany, Finland and Portugal extend the exemption benefit to self-employed individuals, allowing them to continue social security coverage in their country of origin. Also, Indian nationals who work as self-employed individuals in EU Member States with which India has entered into SSAs may be covered under the social security schemes of those destination countries to the extent applicable in the said destination country. Such individuals may obtain the benefit of totalization of period and exportability to avail social security benefits from the destination country. However, this general principle is not applicable to self-employed individuals in the SSAs entered into by India with Belgium, Sweden, The Czech Republic and Luxembourg.

27 EPFO circular no. IWU/7/(25)/2017/Clarification reg. Para 83/5041 dated 23 June 2017

# 9. Impact of SSAs with certain EU Member States

# 9. Impact of SSAs with certain EU Member States

## A. SSAs between India and Germany

The SSA between India and Germany was first signed on 8 October 2008. This agreement, which was limited to exemption-related provisions, came into force on 1 October 2009. A comprehensive SSA was later signed between the two countries on 12 October 2011, and this came into force on 1 May 2017. The comprehensive agreement provides all applicable benefits covering exemption, totalization of period, exportability of benefits and equality of treatment.

The agreement contains two provisions under which exemption can be claimed from social security coverage in the destination country. The first, Article 7, applies when the salary costs for the employee are borne by the employer entity in the country of origin, the assignment is limited to a maximum duration of 48 months, and the home employer is still authorised to direct the working tasks of the employee. The second, Article 9, applies if the salary costs are borne by the employer entity in the destination country.

| Benefits for German employees working in India | |
|---|---|
| Employee's perspective | • continuous coverage under German social security, specifically the pension and unemployment scheme<br>• no deductions in employee's German pension periods, no deductions when applying for old age pension at the age of 67, and no deductions in case of applying for unemployment money |
| Employer's perspective | • no requirement to contribute towards Indian Provident Fund<br>• continuous deduction towards German pension and unemployment contributions through the assignee's German payroll, like before |

| Benefits for Indian employees working in Germany | |
|---|---|
| Employee's perspective | • continuous coverage under Indian Provident Fund<br>• exemption from German pension and unemployment insurance contributions<br>• contributions payable towards health, nursing care insurance and accident insurance in Germany (except where salary costs are borne by the Indian employer and there is no local German employment contract)<br>• depending on the health insurance and nursing care plan chosen, the Indian employee can be covered for medical treatment expenses and nursing care in Germany<br>• accident insurance covers all services relating to an accident at work and occupational diseases |
| Employer's perspective | • cost savings for the employer – exemption available from German pension and unemployment insurance |

## B. SSAs between India and France

The SSA between India and France was signed on 30 September 2008. The agreement came into force on 1 July 2011. The agreement is comprehensive and covers all the applicable benefits such as exemption, totalization of period, exportability of benefits and equality of treatment.

| Benefits for French employees working in India | |
|---|---|
| Employee's perspective | • continuous coverage under French social security, either under the French statutory scheme or under the French voluntary scheme<br>• exemption from Indian Provident Fund contributions only in case of continuous coverage under the French statutory scheme |
| Employer's perspective | • no change in practice followed by the French companies<br>• even if there is an option under the agreement to claim exemption from Indian Provident Fund contributions, such benefit is not availed as it is cheaper for French companies to pay Indian Provident Fund contributions and French voluntary contributions than to pay into the French statutory scheme |

| Benefits for Indian employees working in France | |
|---|---|
| Employee's perspective | • continuous coverage under Indian Provident Fund<br>• exemption from French retirement and disability contributions<br>• contributions payable towards other branches in France; out of the employee's total French social security contributions (approximately 25 per cent), a third are allocated towards retirement and disability contributions and can be exempt if an Indian COC is available; similarly, out of the employer's total contributions (approximately 45 per cent), a fourth are allocated towards retirement and disability contributions, and can be exempt<br>• eligible for various benefits in France, such as healthcare, maternity, work injury, unemployment and so on |
| Employer's perspective | • cost savings for the employer – exemption available from French retirement and disability contributions |

## C. SSAs between India and the Netherlands

The SSA between India and the Netherlands was signed on 22 October 2009. The agreement came into force on 1 December 2011. While the agreement covers provisions relating to exemption, exportability of benefits and equality of treatment, it does not cover provisions for totalization of period.

| **Benefits for Dutch employees working in India** | |
|---|---|
| Employee's perspective | • remains fully covered under Dutch social security, ensuring no gap in benefits<br>• exemption from Indian Provident Fund contributions |
| Employer's perspective | • no requirement to contribute towards Indian Provident Fund |

| **Benefits for Indian employees working in the Netherlands** | |
|---|---|
| Employee's perspective | • continuous coverage under Indian Provident Fund<br>• full exemption from Dutch social security<br>• healthcare and related benefits may be provided under a private plan |
| Employer's perspective | • cost savings for the employer; exemption available from Dutch social security |

# 10. Benefits of SSAs

# 10. Benefits of SSAs

According to the results of the survey conducted as part of this study, 67 per cent of companies confirmed that the cost of assignment after obtaining a COC for employees sent to EU Member States has gone down. Two companies were of the view that their cost had not changed while two others believed that their cost had actually gone up. The latter companies suggested that even though there was no charge from EPFO for COC, the increased cost was because of the increased internal administration cost incurred by companies for obtaining the COC in India.

The specific benefits of the SSAs for Indian employees assigned to EU Member States and EU employees assigned to India are discussed below.

## A. For Indian employees assigned to EU Member States

Indian employees assigned to EU Member States with which India has entered into SSAs enjoy the following benefits:

1. **Exemption:** Employees can enjoy an exemption from social security contributions in the destination country and continuous social security coverage in India.

   Indian employees sent to EU Member States with which India has entered into SSAs and who continue to contribute towards the Provident Fund in India during the assignment period are exempt from social security contributions in the destination country. Such Indian employees can obtain a COC from the EPFO in India basis which the exemption benefit is available in their destination country. This exemption is however limited to specific social security branches of the destination country as covered under the SSA.

   As per the dashboard available on the EPFO portal,[28] the EPFO as on 8 July 2021 had issued 212,744 Certificates of Coverage to Indian employees going on assignment to EU Member States. This includes COCs that are live and COCs that have been cancelled or have expired since they were issued. This means that since 1 September 2009, when India's first SSA with Belgium entered into force, 212,744 Indian employees going on assignment to the EU Member States have benefited from the SSAs.

| Countries | Number of COCs issued by EPFO (as on 08/07/2021) | Number of Active COCs (as on 08/07/2021) |
|---|---|---|
| Germany | 75,312 | 3,013 |
| Netherlands | 44,362 | 3,839 |
| Belgium | 32,493 | 3,057 |
| Sweden | 24,935 | 1,585 |
| France | 11,915 | 582 |
| Denmark | 9,957 | 1,163 |
| Finland | 6,532 | 536 |

28 EPFO portal as on 10 July 2021 – Dashboard for the status of issue of COC under SSA with other countries

| | | |
|---|---|---|
| Hungary | 2,968 | 361 |
| Austria | 1,330 | 60 |
| Luxembourg | 1,523 | 250 |
| The Czech Republic | 1,276 | 142 |
| Portugal | 141 | 5 |
| **Total** | **212,744** | **14,593** |

The maximum number of COCs have been availed of by Indian employees going to Germany (75,312) followed by the Netherlands (44,362) and Belgium (32,493).

Claiming social security exemption in the destination country is beneficial to both employers and employees. From the employee's perspective, it ensures continued Provident Fund coverage in India (the country of origin) and a higher take-home salary. From the employer's perspective, it leads to cost savings, as there is no need to make social security contributions both in India and the destination country.

However, from the perspective of EU Member States citizens, the impact of the agreement has been very limited. Portugal for example reported that only 20 Portuguese nationals had availed of the benefits under this agreement in 2020.

2. **Totalization:** Employees can be eligible for social security benefits in the destination country.

   In some cases, Indian employees who work in EU Member States are not able to claim the exemption benefit under the SSAs. This may be due to employees not satisfying various conditions to claim the benefit. For example, if an employee has been locally hired in the destination country and there are no Provident Fund contributions during the period of employment, no exemption benefit is available, since the employee is not eligible to obtain a COC in India. In such cases where an exemption benefit is not available, the Indian employee will be required to make social security contributions in the destination country.

   In such cases where Indian employees contribute towards social security in the destination country, the totalization of period clause under the SSA is helpful. Totalization of period ensures that the period of contributions in the country of origin and the destination country are totalized to determine eligibility for social security benefits in either country. For example, one of the conditions to claim a monthly pension benefit under the EPS is that the employee should have rendered eligible service for ten years or more. When determining whether an employee has rendered ten years of service to ascertain eligibility for pension benefit, the service period in both the country of origin and the destination country is totalized.

   This is beneficial to employees as it enhances their eligibility for social security benefits from the destination country even if they have contributed for short period there.

3. **Preservation of domestic worker status in India:** As per the special provisions in respect of international workers in the EPS, the definition of international worker includes an Indian employee who has worked in a foreign country with which India has entered into a SSA and is eligible for social security benefits in the destination country by virtue of eligibility under the said agreement.

Thus, if an Indian employee contributes to the social security scheme of the destination country (a country with which India has entered into a SSA) and is eligible for social security benefits from the destination country, the employee will qualify as an international worker in India.

If an Indian employee continues Provident Fund contributions during the period of assignment and obtains a COC in India, the employee will be exempt from social security contributions in the destination country. Of course, an employee who is exempt from social security contributions in the destination country will also not be eligible for social security benefits in that country, and will thus not qualify as an international worker in India.

To not qualify as an international worker benefits Indian employees as international workers are subject to stringent rules under the EPF scheme and the EPS as regards coverage and contributions. For example, Provident Fund contribution for domestic workers can be limited on monthly pay of 15,000 Indian rupees per month. However, for foreign nationals working in India under SSAs, there is no salary ceiling and contributions are required on full monthly pay covering all cash allowances.

**Benefits of SSAs for Indian employees assigned to EU Member States:**

- **Exemption** – exemption from social security contributions in the destination country (for branches covered under the SSA)
- **Totalization** – eligibility for social security benefits in the destination country
- Preservation of domestic worker status (not international worker) in India

## B. For EU employees assigned to India

Foreign national employees assigned to India from EU Member States with which India has entered into SSAs enjoy the following benefits:

1. **Exemption:** Employees can be exempt from social security contributions in India,

   Foreign passport-holder employees working for an employer registered under the PF Act qualify as international workers in India, and international workers are subject to mandatory Provident Fund contributions. Further, for international workers, Provident Fund contributions are required at the rate of 24 per cent of basic salary and all cash allowances (except for house rent allowance and other specified components) without any ceiling limit.

   By being covered under SSAs and obtaining a COC from their country of origin, foreign passport-holder employees qualify as “excluded employees” under the EPF scheme in India. As excluded employees, they are not required to make Provident Fund contributions in India.

2. **Totalization:** Employees can be eligible for benefits from the Pension Scheme (if contributions are made in India).

   In cases where foreign passport-holder employees do not obtain a COC in their country of origin, they must make Provident Fund contributions in India. In such cases, the totalization of period clause ensures that the period of coverage in both the country of origin and India is totalised to determine social security benefit in either country.

3. **Exportability:** Employees can be eligible to receive refunds from the Provident Fund Scheme directly into foreign bank accounts.

As per the general rules, Provident Fund withdrawal is available in any scheduled commercial bank or post office. Scheduled commercial banks are banks notified by the Reserve Bank of India.

In cases where foreign passport-holder employees have made Provident Fund contributions, the export of benefit clause of the SSA allows them to claim Provident Fund withdrawal into foreign bank accounts.

This is specifically beneficial for foreign passport-holder employees who have left India and closed their bank account in India.

4. **Early withdrawal:** Employees can withdraw their contributions from the EPF scheme on completion of their Indian assignment (if their contributions were made in India).

Under the scheme, an international worker is normally eligible to claim lump sum withdrawal on retirement at any time after attaining 58 years of age or on permanent or total incapacity to work. However, for an international worker covered under a SSA between India and their country of origin, early lump sum withdrawal is available immediately upon ceasing to be an employee of an employer registered under the PF Act.

The EPFO has facilitated early withdrawal from the EPF scheme for international Workers covered under SSAs. The EPFO has issued a circular[29] on 20 October 2014 clarifying the process for payment of the Provident Fund amount to international workers into their bank accounts outside India in cases where the workers are eligible for "exportability of benefits" under a SSA. The EPFO has also made arrangements with the State Bank of India to facilitate the payment of Provident Fund outside India.

Also, on 23 March 2017, the EPFO issued another circular[30] facilitating the payment of the Provident Fund and Pension amounts to international workers when retiring in India. For this purpose, the employer is required to make a payment of the Provident Fund contribution for the retiring international worker within the first three days of the month in which the employee is retiring. The Provident Fund claim form in respect of the international worker must be submitted to the EPFO by the 6th of the month in which the employee is retiring. The regional offices are directed to credit the settlement amount to the employee's Indian bank account on the date of leaving service in India.

**Benefits of SSAs for EU employees assigned to India:**

- **Exemption** – exemption from social security contributions in India
- **Totalization** – eligibility for benefits from the EPS
- **Exportability** – eligibility to receive Provident Fund withdrawal directly in a bank account outside India
- Early lump sum Provident Fund withdrawal on completion of Indian employment

29 EPFO Circular: IWU/8(2)2009/Banking Agreement/19453 dated 20 October 2014

30 EPFO Circular: IWU/7/(25)/2017/Payment of PF and Withdrawal Benefits/34140 dated 23 March 2017

## C. For countries

Both countries of origin and destination countries benefit from bilateral SSAs.

1. **Attracting talent: SSAs encourage freer movement of talent as dual contributions are reduced and long-term benefits are protected.**

   As dual costs are reduced for employers and employees through bilateral SSAs, talent is more willing to cross boundaries and countries can attract skilled people as per their labour market requirement.

2. **Keeping enterprises competitive: By reducing costs for employers, SSAs attract firms and improve the competitiveness of nations.**

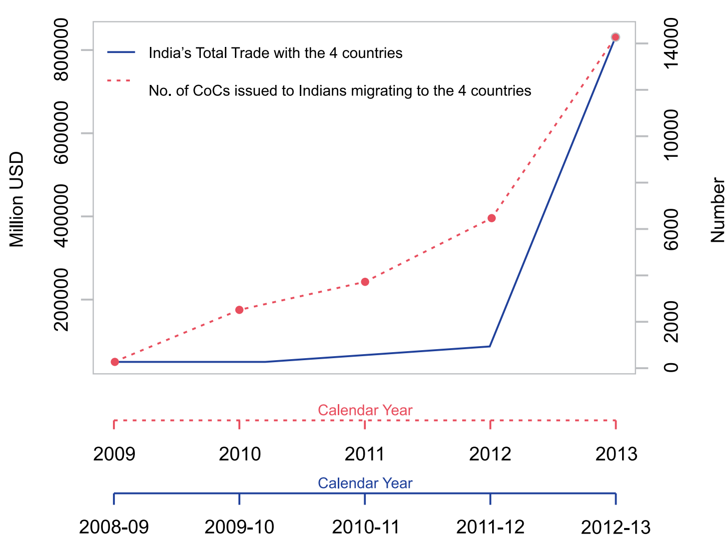
   One of the major benefits of SSAs is reduced cost in terms of savings for employers and employees by eliminating dual contribution to social security systems.[31] This avoidance of the double burden of contributions helps to safeguard the competitiveness of enterprises in local markets.

3. **Increasing bilateral trade: Increased mobility supported through SSAs is likely to increase trade**

   India's trade with four EU countries analysed in an earlier study shows a correlation between bilateral trade and the mobility of posted workers.

**India's total trade with four EU countries versus COC issued.**

This plot shows the total trade with Belgium, Germany, Netherlands and Switzerland, along with the combined migration to the four countries.




*Source: Tiwari AK, Ghei D, Goel P*

31 Tiwari, Atul Kumar, Dhananjay Ghei, and Prerna Goel. "Social Security Agreements (SSAs) in Practice: Evidence from India's SSAs With Countries in Europe." Working Papers. National Institute of Public Finance and Policy, July 2017. https://ideas.repec.org/p/npf/wpaper/17-203.html .

4. **Returning talent to its origin: Maintenance of social security at the country of origin could act as a safety net for return and disincentivise irregular migration.**

   Continued social security cover for employees and their family members in the country of origin enables countries to retain talent. The EU recognises that the “portability of social and pension rights could also be a facilitator for mobility and circular migration, as well as a disincentive for irregular work”.[32] However amongst the EU Member States’ SSAs with India, only three (Belgium-India, Denmark-India and Sweden-India SSAs) mention benefits for accompanying family members.[33]

5. **Supporting social equality: SSAs help to maintain equality amongst workers, improving standards of living and conditions of employment, and preventing loss of claims.**

   Many countries base eligibility for social security benefits on a person’s nationality. When a country has such nationality-based restrictions in its social security system, a worker or a member of a worker’s family who is not a national of the country may not be eligible for any benefit at all, or may be entitled to a lesser benefit than a national, or may be subject to more stringent eligibility requirements than a national. The practical effect of such restrictions is to disqualify migrant workers and their family members from receiving benefits.

   A primary objective of SSAs is to overcome these nationality-based restrictions. Through an agreement, each country, as a party, undertakes to treat workers who are nationals of the other parties in the same way it treats its own nationals. Equal treatment is usually also extended to the worker’s family members, irrespective of their nationality, in relation to the rights they derive from those of the worker.

6. **Fiscal benefits: Workers remain life-long contributors to social security systems, thereby allowing countries to maintain correct estimates for fiscal calculations.**

   With continued social security coverage in the country of origin for employees and their family members, countries can make correct estimates towards their social security-related liabilities.

7. **Fighting against fraud: SSAs foster coordination between countries, thereby supporting the fight against social fraud and enabling the collection of contributions and recovery of benefits not due in the other State.**

   All the SSAs (entered into by India) contain a provision on the protection of data exchanged between the competent authorities. The SSAs with the following EU member states - ¬ Austria, Finland Germany, France and the Netherlands - have a rule related to refunds of undue payments. The competent institution of one state can deduct the amount from the payments to be made to the beneficiary and transfer the amount to the competent institution of the other state.[34]

32 European Commission (2011): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: The Global Approach to Migration and Mobility /* COM/2011/0743 final

33 Melin, Pauline. ‘Member States’ Social Security Agreements with India: Lessons for the Future of a Common EU Approach’. European Journal of Social Security 20, no. 2 (June 2018): 173–87.

34 Ibid

# 11. Challenges in implementation of SSAs

# 11. Challenges in implementation of SSAs

The implementation of SSAs involves certain practical challenges and issues:

1. **Partial exemption from the other country's social security scheme, leading to residual liabilities in the destination country**

   In the context of social security coordination, a consequence of the reciprocity principle is that States can only concede on elements that exist in their own social security systems. For example, a State cannot include an unemployment benefit scheme in the scope of a bilateral agreement if that State does not have such a scheme.[35] Therefore, as India does not provide unemployment benefits in the country, it is not included in the SSAs.

   The PF Act of India does not provide universal coverage of all aspects of social security. Thus, only specific branches of the other country's social security scheme, those that provide benefits similar to the benefits under the PF Act, are covered under the SSAs. Other branches of the social security scheme of the destination country, which cover benefits not provided for under the PF Act, do not have a reciprocal arrangement under the SSAs. Thus, Indian employees are not eligible for exemption from these social security branches in the destination countries under the SSA.

   In instances where India has a SSA with a destination country, the Indian employee continues Indian Provident Fund contributions and is not required to contribute towards social security in the destination country. In such cases, medical and related benefits may be offered to the employees by the employer under a private plan.

   SSAs entered into by India with France, Germany, Finland, Sweden and The Czech Republic cover only a few specific branches of the social security scheme of the other country. For instance, under the SSA between Germany and India, an Indian employee working in Germany with an Indian COC is exempt from paying German pension and unemployment insurance contributions. However, contributions to health and nursing care insurance and accident insurance are still required, allowing employees to enjoy the related benefits in the destination country.

   This has been confirmed by the findings of the survey conducted as part of this study.

2. **Differences in exemption clause of the SSAs**

   The exemption clause under some of the Indian SSAs requires the migrating employee to be working "on behalf of" the Indian entity. The SSAs of India with Austria, Belgium, France, Germany, Luxembourg, the Netherlands, Norway, Portugal, Sweden and Switzerland have such clauses. In practice, however, when an employee goes on an assignment abroad, he/she is usually considered to be working for the host country entity (and not for its Indian counterpart). In the present world, with multinational organisations present in almost all countries, an employee is usually sent on assignment to a destination country to work for a group company, a subsidiary company, a holding company, an affiliate, a joint venture, or a branch office of the employer entity in the destination country. This is done to avoid corporate tax exposure for the Indian entity in the host country.

35 Melin, The External Dimension of EU Social Security Coordination: Towards a Common EU Approach, BRILL.

Sending employees to the destination country to work on behalf of the employer in the country of origin also has corporate tax implications for the employer in the destination country. Thus, technically, employees sent to work in these destination countries may not satisfy the exemption condition of the SSAs.

In SSAs entered into by India with EU Member States like, Denmark, The Czech Republic, Hungary and Finland, this challenge has been eliminated.

The SSAs with Denmark, The Czech Republic and Hungary specifically provide that the employer in the country of origin and its affiliate or subsidiary company in the destination country are considered one and the same, thus allowing the employee to claim a exemption benefit where the employee is working for the affiliate or subsidiary company in the destination country.

The SSA with Finland allows an exemption benefit where the employee is seconded to the related entity in the destination country.

However, SSAs entered into by India with Belgium, Luxembourg, France, the Netherlands, Sweden and Austria allow the exemption benefit only where the employee works in the destination country on behalf of the employer in the country of origin.

There is also an example from Portugal where the understanding on exemptions from applicable legislation is still pending. It seems that there is room for improvement in communication and response time to queries, between administrations on the bilateral principles.

### 3. Lack of clarity regarding the processing of COCs for Indian employees

The current process to apply for and issue COCs in India is fully electronic. However, every COC application is manually checked by the EPFO regional office, and after verification, the COC is issued and uploaded to the portal.

In the survey conducted as part of this study, 62 per cent of companies confirmed that they find the COC application process in India smooth and have not faced any challenges when dealing with it. However, seven companies observed that the process is sometimes challenging, time-consuming, and requires multiple follow-ups at the Provident Fund office. One possible reason for this could be that the applications are processed manually by the regional offices of the EPFO and there is no automated system for verification and processing of applications.

Some companies were of the view that for short-term assignments, by the time COCs are issued, either the employees have repatriated to India or the assignment is about to close, and hence, the company is unable to claim exemption from social security in the destination country in the monthly payroll. There is no standard time for obtaining COCs; the average time can vary from one week to several months, depending on the complexity involved and the regional office involved.

Even though EPFO has been conducting periodical training programmes at Pandit Deendayal Upadhyaya National Academy of Social Security and zonal training institutes, companies have noticed that some officers dealing with the COC applications in the regional offices of the EPFO are still not familiar with the provisions of the SSAs. In one such case, it was insisted by the regional office that the employees sent to destination countries with a COC from India qualify as international workers in India.

The changes in the definition of international workers has also reportedly created some confusion. Until June 2017, Indian employees also qualified as international workers and upon return were treated as such. However, on 23 June 2017, the EPFO issued a circular[36] clarifying its position on the definition of international worker for Indian employees. The circular states that Indian employees who return to work in India after having worked in another country with which India has a SSA will not be considered as international workers for Provident Fund purposes. Thus, Indian employees will not be considered as international workers upon their return to India and will be treated as domestic workers. They are therefore not subject to the stringent rules for PF as foreign nationals. Clear communication on this change is required, particularly as this change subordinates the principle of equality with reciprocity in the SSAs.

### 4. Lack of clarity with regard to foreign national employees

Concerning the personal scope of the SSAs, it is important to realise that none of them are based on nationality requirements. They include persons on the basis of their subjection to the social security legislation of either country.[37] All the SSAs entered into by India with EU Member States therefore cover any person who is or has been subject to the legislation of a contracting State and other persons who derive rights from such person. Thus, third country nationals are also covered under the SSAs.

If a foreign national is employed in India and is sent on a short-term assignment from India to the other country, under the SSA between India and the destination country, the person is eligible to obtain a COC from India and claim exemption from social security in the destination country.

However, the survey conducted for this study in 2019 raised the issue that foreign nationals employed in India have sometimes faced challenges in obtaining a COC from the EPFO in India. It is believed this was due to lack of clarity of some Provident Fund regional offices as they were of the view that COCs can only be issued by the EPFO to Indian passport-holders.

In fact, the EPFO reports over 800 foreign nationals from 30 countries having received COCs in December 2020 (out of a total of approximately 8,000 foreigners who are reported to be working in India by the Bureau of Immigration during the period). It also reports that no complaints regarding non-issuance having been received recently by the authorities, indicating some improvement in the granting of COCs to foreign nationals.

### 5. Difficulties in withdrawal of benefits from India for foreign nationals

International workers covered under a SSA are permitted to claim Provident Fund withdrawal in any of the following types of bank accounts:

a. An employee’s bank account in India

b. An employee’s bank account outside India

c. The employer’s bank account in India

Where international workers have AADHAAR[38] linked to their Provident Fund account and have an Indian bank account, they can make an online Provident Fund withdrawal application. The process to claim withdrawal online is simple and efficient.

However, many international workers do not have AADHAAR in India. In such cases, a manual application is required to be filed with the regional office of the EPFO. The manual application process raises multiple challenges. EPFO has standardised the documents to be filed for the withdrawal application for international workers. Earlier, the documentation requirement varied between different regional offices and there was

36 EPFO circular no. IWU/7/(25)/2017/Clarification reg. Para 83/5041 dated 23 June 2017

37 Melin, The External Dimension of EU Social Security Coordination: Towards a Common EU Approach, BRILL.

38 AADHAAR is a 12-digit individual identification number issued to residents of India. The number serves as a proof of identity and address anywhere in India.

also a case of different documents been requested by different officers within the same office. However, EPFO reports that monthly, four to five overseas payment transactions are made, and after the revisions issued in 2020, the EPFO authorities have not received any grievances regarding this issue. There is no standard timeline within which the regional offices are required to process the withdrawal application and remit funds to the employee's account.

In many cases, after leaving India, international workers may close their Indian bank accounts. The only option for them to claim Provident Fund withdrawal then is in their bank account outside India or through the employer. The EPFO has issued a circular[39] on 20 October 2014 clarifying the process for payment of Provident Fund to international workers into their bank accounts outside India. To streamline the process, the EPFO provided an option to international workers on 23 March 2017 to claim Provident Fund dues in the last month of their employment in India. However, according to companies surveyed, international workers continue to face challenges in claiming benefit in their overseas bank account if they have already left India and do not have a bank account in India. The EPFO also shared further guidelines in 2020 to standardise the process followed at the EPFO to obtain Form 15CA /CB, which is required to remit Provident Fund money to an employee's bank account outside India. Despite the improvements there is still some difficulty experienced by foreign nationals. Regular exchanges between EPFO and users of the system would be helpful in understanding the difficulties in detail and further improving the system with regards to withdrawals.

### 6. Slow response system for queries

Some EU Member States report facing difficulties in receiving timely responses to requests and according to them the SSA is not really working so well in reality. Examples include difficulties in obtaining information related to COCs issued, the actual copies of the COCs, annual statistics, information needed to calculate pensions etc.

Indian authorities report that with the revised digitalization of the portal in 2020, some of this information is available online now and can be accessed by the counterpart authorities in other countries. However, this does not underlie the fact that there is room for improvement of communication between the two parties. The joint working committees included in the newly signed SSAs are a right step in this direction. However, for the older SSAs, this lacunae in communication needs to be addressed.

**Challenges/issues:**

- Partial exemption from the other country's social security scheme, leading to residual social security liabilities in the destination country (and eligibility towards such benefits)
- Exemption clauses of some SSAs allowing exemption only where an employee is working for the home country employer in the destination country
- Cumbersome COC process, though largely electronic; involves complex documentation; has no provision for bulk filing; and includes non-automated verification and issuance of the COC
- Frequent denial of COCs to foreign national employees in India by the EPFO
- Cumbersome processes for Provident Fund withdrawal for some foreign national employees in India
- Slow response to queries; older SSAs do not have joint working committees

39 EPFO Circular: IWU/8(2)2009/Banking Agreement/19453 dated 20 October 2014

# 12. Conclusion and suggestions for the way forward

# 12. Conclusion and suggestions for the way forward

## 1. Effectiveness of SSAs

The study confirms that the SSAs entered into by India with EU Member States are effective as they allow employees to continue under the social security scheme of their home country while on assignment in a foreign country. Continuity of social security in the country of origin ensures that there is no impact on the employee's social security benefits while on assignment or on their pension eligibility and pay-out after retirement.

In the survey, most companies confirmed that the SSAs have reduced their overall cost of assignment by avoiding situations of double social security contributions both in the country of origin and the destination country.

## 2. Added value for countries

SSAs enable free movement of talent and improve the competitiveness of enterprises and nations by (a) attracting the right talent from other countries and (b) providing a safety net for return.

SSAs also ensure that countries meet their objectives of ensuring social equality amongst workers, improving standards of living and conditions of employment and preventing loss of claims. They enhance bilateral trade and contribute towards long-term fiscal benefits. SSAs are helpful in the fight against fraud, through the sharing of data and coordination of information.

## 3. Coverage of SSAs

In the survey conducted as part of this study, companies confirmed that the SSAs entered into by India with Germany and France provide only partial exemption from the social security branches of the destination country. Since these agreements are reciprocal, disparities in social security coverage mean that Indian employees cannot avail full exemption in the destination countries. Instead, Indian employees continue to make mandatory contributions towards those branches in destination countries and in return are eligible for benefits that accrue from such contributions (for example, healthcare benefits in the destination country).

Regardless of the existence of SSA, countries that have ratified ILO Convention No118 – Equality of Treatment (Social Security) – and/or Convention No157 – Maintenance of Social Security Rights – are obliged to provide social security of relevant branches to foreigners present in the country. Therefore, if the country has already ratified C118 and/or C157, it is reasonable to include the selected branches of C118 and/or C157 in the SSA. In case of India, India ratified C118 in 1964 and selected the branches of medical care and maternity benefit. Thus, it is reasonable to include these two branches in SSA as regardless of SSA, the Government of India is obliged to provide social protection on these two branches to the foreigners residing in India.

The Government of India is in the process of introducing four new labour codes in India, which will replace the existing multiple central labour laws. One such code is the Code on Social Security, 2020[40] which provides full social security cover to employees, including Employees' Provident Fund, employees' state insurance, gratuity, maternity benefit and employees' compensation in case of death or injury. The proposed Code on Social Security also covers gig workers, platform workers, home-based workers, self-employed workers, and other workers in the unorganised sector. Thus, all forms of employment, including those that are outside of the traditional employer-employee relationship, are covered under the proposed code.

With India taking steps towards a full social security regime for all forms of employment, the challenge of limited coverage of social security branches of EU Member States under the SSAs may be addressed by revising some of the old agreements and ensuring that future agreements provide full exemption from all social security branches of the EU Member States.

## 4. Terms of SSAs

The scope, provisions and conditions of the SSAs differ from country to country. This creates complexity for all concerned – regulators in both the country of origin and the destination country, employers and employees. A model SSA or minimum criteria that may be met in all SSAs is thus recommended. The ILO "Model agreement for the coordination of bilateral or multilateral social security instruments" included in Recommendation R167[41] provides a framework that can be adapted by countries as per their specific needs. The 1998 Model Provisions for a Bilateral Social Security Agreement of the Council of Europe may also be revisited. Continued dialogue and exchange of information between the EU Member States and between EU Member States and India would be helpful towards developing a common approach with India.

As India moves towards a new labour code that includes universalizing social security, there will be a need to revisit all the existing (12) social security agreements with EU Member States and revise them accordingly.

To ensure that this process takes into consideration the needs of industry and workers, consultations with industry and representative of employees are recommended before any future agreement is signed and also in a continued manner, for feedback and improvement in implementation.

## 5. Improvement in administrative processes

In the survey, some companies recommended that the process could be streamlined further if officers dealing with COCs in the Provident Fund regional offices could be regularly updated with the provisions of the SSAs between countries. This would allow them to deal with COC requests efficiently and minimise the turnaround time in issuing the COC. Proper training materials and manuals may be developed to ensure smooth processing of the COC application process.

Such training materials and manual will also remove ambiguity regarding whether foreign nationals can obtain a COC from the EPFO in India. Providing information in regional languages, as is being embarked upon by EPFO, is viewed as a step in the right direction.

40 The code on Social Security, 2020 has received the assent of the President on the 28th September, 2020

41 Annex II in http://courses.itcilo.org/A406214/library-en/27-06-2013-17-24-31/at_download/AttachmentFile

Some companies also recommended that the process for applying for a COC should be simplified, with a defined turnaround time within which the COC will be issued by the Provident Fund regional office. This will ease the compliance burden of companies having large India-outbound populations. To expedite the COC process, the EPFO has recently provided an e-sign option to employers and EPFO officials, thereby doing away with the need to print and manually sign COC application and certificate.

Finally, companies felt that there should be further streamlining of the process for the exportability of benefits permitted in the SSAs.

## 6. Better technology

Some steps in the COC application process can be made more efficient and effective. For example, instead of the requirement to upload a signed application by the employee, an AADHAAR-based password verification (and other digital options for those overseas) may be allowed as an option for employees. This verification process is already allowed by the EPFO for online Provident Fund withdrawal applications.

Under the current process, every COC application process is manually checked by the regional office. Given that the employees' Provident Fund accounts are now linked to their Universal Account Numbers, further automation in the system may be established to make the system more efficient. In case of any inconsistencies, an error report may also be issued promptly, thereby speeding the process of COC issuance.

Electronic file exchange systems across countries is considered one of the best practices. It would be prudent for India to work to further improve information exchange through technology with countries to expedite information flow and ensure timely benefits for workers.

## 7. Regular and improved communication system

As obtaining timely information is important and it not always possible to keep up with new processes that are introduced from time to time by the sides, it would be very helpful to have a regular channel for communication and addressing of queries. The more recent SSAs have established a joint working committee (JWC) to enhance cooperation. Older SSAs may be revised to include such JWCs. However, establishing more avenues for communication between countries could be very beneficial and additional resources may be allocated for such processes to ensure that the coordination is smooth and remains satisfactory for both sides.

## 8. Need for further research

There has been limited research to understand SSAs, especially from the Indian perspective. Evidence-based studies on benefits as well as understanding the commonalities and differences between agreements and their impacts will help inform decision-making for future policies.

# 13. Appendix

# 13. Appendix

## A. EU–India trade picture[42]

1. The EU is India's largest trading partner, accounting for 92 billion Euros worth of trade in goods in 2018 or 12.9 per cent of total Indian trade, ahead of China (10.9 per cent) and the USA (10.1 per cent).

2. The EU is the leading destination for Indian exports (almost 18 per cent of the total).

3. India is the EU's ninth largest trading partner, accounting for 2.3 per cent of the EU's total trade in goods in 2018, well behind the USA (16.9 per cent) and China (15.3 per cent).

4. Trade in goods between the EU and India increased by 72 per cent over the last decade.

5. Trade in services between the EU and India increased from23 billion Euros in 2010 to 29 billion Euros in 2016. India is now the fourth largest service exporter to the EU and the sixth largest destination for EU service exports.

6. The EU's share of foreign investment inflows to India more than doubled from 8 per cent to 18 per cent in the last decade, making the EU the first foreign investor in India.

7. EU foreign direct investment stocks in India amounted to 73 billion Euros in 2016, which is significant but considerably below EU foreign investment stocks in China (178 billion Euros).

8. Some 6,000 EU companies are present in India, providing directly 1.7 million jobs and indirectly 5 million jobs in a broad range of sectors.

9. Indian companies have invested over 50 billion Euros in Europe since 2000.

42 https://ec.europa.eu/trade/policy/countries-and-regions/countries/india/

## B. Summary of COCs issued by the EPFO

| Countries | Net workload | Generated | Cancelled / Expired | Total Generated | Rejected | Pending |
|---|---|---|---|---|---|---|
| | (A) | (B) | (C) | (D) = (B) + (C) | (E) | (F) |
| **EU Member States** | | | | | | |
| Germany | 83 559 | 8 490 | 55 468 | 63 958 | 4 082 | 15 519 |
| Netherlands | 50 130 | 6 547 | 25 758 | 32 305 | 3 989 | 13 836 |
| Belgium | 34 495 | 4 311 | 21 548 | 25 859 | 1 838 | 6 798 |
| Sweden | 29 059 | 3 751 | 13 969 | 17 720 | 2 530 | 8 809 |
| France | 14 223 | 1 248 | 8 387 | 9 635 | 290 | 4 298 |
| Denmark | 11 593 | 1 671 | 5 419 | 7 090 | 1 099 | 3 404 |
| Finland | 7 599 | 825 | 3 896 | 4 721 | 503 | 2 375 |
| Hungary | 3 181 | 399 | 1 416 | 1 815 | 355 | 1 011 |
| Austria | 1 583 | 150 | 897 | 1 047 | 97 | 439 |
| Luxembourg | 1 696 | 298 | 710 | 1 008 | 268 | 420 |
| Czech Republic | 1 477 | 324 | 551 | 875 | 126 | 476 |
| Portugal | 192 | 50 | 50 | 100 | 10 | 82 |
| **Total (I)** | **238 787** | **28 064** | **138 069** | **166 133** | **15 187** | **57 467** |
| **Non-EU Member States** | | | | | | |
| Australia | 56 315 | 12 071 | 22 865 | 34 936 | 4 031 | 17 348 |
| Switzerland | 25 019 | 2 043 | 17 025 | 19 068 | 946 | 5 005 |
| Canada | 30 291 | 6 724 | 8 125 | 14 849 | 3 690 | 11 752 |
| Japan | 17 253 | 3 695 | 4 321 | 8 016 | 2 168 | 7 069 |
| Norway | 9 825 | 1 645 | 4 001 | 5 646 | 952 | 3 227 |
| Korea | 2 524 | 125 | 1 848 | 1 973 | 114 | 437 |
| **Total (II)** | **141 227** | **26 303** | **58 185** | **84 488** | **11 901** | **44 838** |
| **Total (I) + (II)** | **380 014** | **54 367** | **196 254** | **250 621** | **27 088** | **102 305** |

Source: EPFO portal as on 19 December 2019 – dashboard for the status of issue of COC under SSA with other countries

ILO Decent Work Team for South Asia and Country Office for India

India Habitat Centre, Core 4B, 3rd Floor,
Lodhi Road, New Delhi 110003, India

Tel: +91 11 47509200, Fax: +91 11 24602111
Email: delhi@ilo.org | www.ilo.org/india