

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (99) 17

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE IMPROVEMENT OF CO-OPERATION AMONG MEMBER STATES

IN THE SOCIAL SECURITY FIELD

*(Adopted by the Committee of Ministers on 15 September 1999
at the 679th meeting of the Ministers' Deputies)*

The Committee of Ministers, pursuant to Article 15.b. of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a closer unity between its members in order, *inter alia*, to facilitate their social progress by promoting the adoption of common regulations within the social field;

Considering that, in adopting the European Convention on Social Security and the Supplementary Agreement for its application, the member States of the Council of Europe have demonstrated their resolve to ensure that foreigners and nationals are treated on an equal basis in the area of social security;

Considering that cross-border mobility continues to increase, necessitating greater co-operation between member States' social security institutions;

Recalling that any exchange of information between institutions must be carried out with due regard to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, to Recommendation No. R (86) 1 adopted by the Committee of Ministers on the protection of personal data used for social security purposes, and to Recommendation No. R (97) 5 on the protection of medical data;

Considering that it is important to improve the effectiveness of co-operation procedures between member States' social security institutions for monitoring events arising in another member State;

Taking account of the fact that certain countries incorporate specific mutual clauses into their bilateral or multilateral social security agreements aimed at improving co-operation for the prevention of social security abuse;

Considering that more general use could be made of this practise, which aims to delimit the scope of mutual assistance clauses usually found in bilateral or multilateral social security agreements;

Recommends that member States' governments:

- draw on the main principles set out in the appendix below when drafting bilateral and multilateral social security agreements;

- ensure that the principles set out in the appendix to the present

recommendation are widely disseminated among the competent authorities;

– take the measures necessary to improve the efficiency of co-operation procedures among social security institutions, in particular:

a. by fostering specialised contacts between the social security institutions;

b. by developing data exchange among social security institutions with a view to improving efficiency of the public service for persons covered by social security agreements, in order to contribute to rendering the implementation of these agreements more transparent while at the same time preventing abuse.

Appendix to Recommendation No. R (99) 17

I. Scope

Social security agreements generally contain a clause on mutual assistance on which the authorities and institutions of the contracting parties rely in order to settle problems in applying the agreement. For certain States this clause is not sufficient and it seems appropriate for specific provisions to be included in order, particularly, to remedy certain forms of abuse. The specific provisions for inclusion in agreements should be based on the governing principles set out below.

II. Governing Principles

II.1. Recovery of undue payments

Social security agreements should include provisions relating to the recovery of undue payments, which entitle the competent institution of a contracting party that has wrongly paid benefits to persons residing in the territory of another contracting party to request the competent institution of the latter State to recover the payments, in accordance with procedures to be agreed by the States concerned. Benefits can be paid wrongly in the case where entitlements to benefits do not, or no longer, exist. The relevant provisions should thus cover situations of overpayment and situations of social security abuse.

II.2. Collection of contributions

Social security agreements should include provisions concerning the collection of contributions payable to an institution of one contracting State according to which the collection may be undertaken in the territory of the other contracting State, in accordance with the administrative procedure applicable to the collection of contributions payable to the corresponding institution of the latter contracting State, or according to the procedure established by agreement between the contracting States.

II.3. Recognition of court decisions or administrative decisions concerning recovery of undue payments and collection of contributions

Social security agreements should include a provision whereby final court decisions or administrative decisions taken by the competent institution of one contracting State are recognised and enforced in the other contracting State. Enforcement should be

subject to the statutory regulations which apply in the State in whose territory the decision or decree is to be carried out governing the execution of similar decisions or rulings handed down or issued in that State.

II.4. *Data verification*

Social security agreements should include provisions concerning data verification according to which, at the request of the competent institution of one of the contracting States, data verification, should be undertaken by the institution of the other contracting State. Data verification may concern data such as, *inter alia*, date of birth, death, widowhood/widowerhood, family situation, or data necessary for payment of unemployment or invalidity benefit, such as the work situation of the person concerned.

Verification of this data should be carried out in conformity with the national legislation of the contracting State where the person is resident and in accordance with international commitments.

II.5. *Administrative checks and medical examinations*

Social security agreements should include provisions concerning administrative checks and medical examinations, according to which, at the request of the competent institution of the contracting State paying the benefits, the necessary administrative checks and medical examinations should be carried out by the institution of the contracting State in whose territory the beneficiary resides. It may also be provided in the agreement that the institution paying the benefits should retain the right to have the beneficiary examined by a doctor of its choice. The cost of the medical examination should be borne by the institution ordering it; the agreement may nevertheless provide for other forms of reimbursement.

II.6. *Data protection*

Social security agreements should contain provisions concerning the protection of personal data which respect national legislation in this field, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the various recommendations of the Council of Europe in this field.