

No. 32473

**BRAZIL
and
SPAIN**

**Agreement on social security (with exchanges of letters of
19 May and 3 June 1992). Signed at Madrid on 16 May
1991**

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 31 January 1996.

**BRÉSIL
et
ESPAGNE**

**Accord de sécurité sociale (avec échanges de lettres en date
des 19 mai et 3 juin 1992). Signé à Madrid le 16 mai 1991**

Textes authentiques : portugais et espagnol.

Enregistré par le Brésil le 31 janvier 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ ON SOCIAL SECURITY BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE KINGDOM OF SPAIN

The Federative Republic of Brazil and the Kingdom of Spain,

Desiring to bring up to date the Agreement regulating relations between the two countries in the field of social security,

Have decided to conclude an Agreement on Social Security, as follows:

TITLE I. GENERAL PROVISIONS

Article 1

1. The terms listed below shall, for the purposes of this Convention, have the following meaning:

(a) “Contracting Parties” or “Parties” means the Federative Republic of Brazil and the Kingdom of Spain;

(b) “Legislation” means the laws, regulations and other provisions referred to in article 2 that are currently in force in the territories of either Contracting Party;

(c) “Competent authority” in respect of Brazil, means the Ministry of Labour and Social Security; in respect of Spain, it means the Ministry of Labour and of Social Welfare;

(d) “Institution” means the agency or authority responsible for applying the legislation referred to in article 2;

(e) “Competent institution” means the body or authority responsible in each specific case, in accordance with the applicable legislation;

(f) “Liaison body” means the agency responsible for ensuring coordination between institutions involved in the application of the Agreement and for informing the interested parties of the rights and obligations arising from it;

(g) “Worker” means any person who as a result of performing or having performed an activity on his or her own account or on someone else’s account is or has been subject to the legislation referred to in article 2;

(h) “Insurance period” means any period defined as such by the legislation under which it was completed, as well as any period recognized by such legislation as equivalent to an insurance period;

(i) “Benefit payments” means all cash benefits, pensions, incomes, subsidies or indemnities provided for in the legislation referred to in article 2, including all complements, supplements or revaluations;

¹ Came into force on 1 December 1995, i.e., the first day of the second month following the date of the last of the notifications by which the Parties had informed each other of the completion of the constitutional requirements, in accordance with article 41.

(j) “Health benefits” means the provision of medical and pharmaceutical services intended to preserve or restore health in cases of ordinary or occupational disease, accidents regardless of their cause, pregnancy, childbirth and post-partum care;

(k) “Family member” means persons defined or recognized as such by the legislation under which the benefits are granted.

2. The meaning of other terms or expressions used in the Agreement shall be that assigned to them in the applicable legislation.

Article 2

1. This Convention shall apply:

A. In Brazil:

To the legislation concerning the general social security scheme with respect to:

- (a) Medical, pharmaceutical and dental care, outpatient and hospital care;
- (b) Temporary incapacity for work;
- (c) Disability;
- (d) Time of service;
- (e) Old age;
- (f) Death;
- (g) Childbirth;
- (h) Industrial accidents and occupational diseases;
- (i) Family income.

B. In Spain:

To the legislation concerning the general scheme and the special schemes that make up the social security system, with respect to:

(a) Medical care in cases of maternity, ordinary or occupational diseases, or accidents, whether or not they are work-related;

(b) Benefit payments in cases of temporary incapacity for work, owing to maternity, ordinary or occupational diseases, or accidents, whether or not they are work-related;

- (c) Disability;
- (d) Old age;
- (e) Death and survival;
- (f) Family welfare;
- (g) Industrial accidents and occupational diseases.

2. This Agreement shall also apply to any legal provisions which in future might supplement or amend the legislation referred to in the preceding paragraph.

3. This Agreement shall apply to the legal provisions establishing a new special social security scheme, should the Contracting Parties so decide.

4. This Agreement shall apply to any legal provisions enacted in one of the Contracting Parties, to extend the legislation in force to new groups of persons, provided that the competent authority of the other Party raises no objection to such measures within three months after receiving notification of such provisions.

Article 3

This Agreement shall apply to persons who are or have been subject to the legislation of one or both Contracting Parties and to their family members or dependants.

Article 4

Without prejudice to the provisions of this Agreement, all persons envisaged in article 3 shall be subject to the obligations embodied in the legislation of the Parties referred to in article 2 and may be entitled to the benefits of such legislation on the same terms as the nationals of that Party.

Article 5

1. The contributory benefit payments made under this Agreement shall not be subject to reduction, modification, suspension or withdrawal solely by virtue of the fact that the beneficiary resides in the territory of the other Party or in a third country, unless this Agreement provides otherwise.

2. Contributory benefit payments that are owed by one of the Contracting Parties under this Agreement shall be made to the beneficiaries even if they are in the territory of the other Party or of a third country.

3. Should either of the Contracting Parties enact provisions restricting the transfer of foreign exchange, the two Parties shall immediately take all necessary measures to guarantee the effective exercise of the rights arising from this Agreement.

TITLE II. PROVISIONS CONCERNING APPLICABLE LEGISLATION

Article 6

1. Individuals to whom this Agreement applies shall be subject only to the social security legislation of the Contracting Party in whose territory they work, except in the cases provided for in article 7.

2. Own-account or independent workers who may be covered in respect of their work by the legislation of both Parties shall be subject only to the legislation of the Party in whose territory they reside.

Article 7

The principle laid down in article 6 shall be subject to the following exceptions:

1. Workers who are employed by an enterprise in either of the Contracting Parties and are sent by that enterprise to the territory of the other Party to work for a limited period of time shall be subject to the legislation of the former Party as if they were still working in its territory, provided that the period of their assignment has not expired and that the duration of the temporary work is not expected to exceed three years. If, for unforeseeable reasons, the duration of the work to be performed exceeds three years, the legislation in force in the former Party may

continue to apply for a period of two years, subject to the authorization of the competent authority of the latter Party. Independent workers who normally work on their own account in the territory of one Party and who engage in work on their own account in the territory of the other Party shall continue to be subject to the legislation of the former Party, provided that the duration of such work is not expected to exceed two years.

2. Airline flight personnel shall be subject solely to the legislation in force in the Party in which the airline has its head office.

3. Crew members of a ship registered in one of the Contracting Parties shall be subject to the legislation of that Party.

Notwithstanding the provisions of the preceding paragraph, persons who work for a third party on board a ship registered in one of the Contracting Parties and who are paid for such work by an enterprise or a person whose main domicile is in the territory of the other Contracting Party shall be subject to the legislation of the latter Party if they reside in its territory. The enterprise or person paying the remuneration shall be considered an entrepreneur for the purposes of such legislation.

4. Persons employed in ports for the purpose of loading, unloading or repairing, or supervising such work, shall be subject to the legislation of the Contracting Party within whose territory the port lies.

5. Staff members of missions and consular offices shall be governed by the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961¹ and the Vienna Convention on Consular Relations of 24 April 1963.²

6. Notwithstanding the above, the administrative, technical and service staff of the diplomatic missions and consular offices of either of the Parties may choose between the legislation of the accrediting State or that of the other State, provided that:

(a) They are not public officials of the accrediting Party;

(b) They are nationals of the accrediting State;

(c) They exercise this option within three months of the entry into force of this Agreement or, depending on the case, within three months of their engagement in the territory of the Party in which they work.

7. Personnel in the private service of members of missions or consular offices shall have the same right of choice as referred to in the preceding paragraph, subject only to the requirements set forth in its subparagraphs (b) and (c).

8. The competent authorities of both Contracting Parties may decide by agreement to add to, eliminate or amend the exceptions set out in the preceding paragraphs.

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.