No. 4464

BELGIUM and SPAIN

Convention on social security. Signed at Brussels, on 28 November 1956

Official texts: French and Spanish.

Registered by Belgium on 6 August 1958.

et ESPAGNE

Convention sur la sécurité sociale. Signée à Bruxelles, le 28 novembre 1956

Textes officiels français et espagnol.

Enregistrée par la Belgique le 6 août 1958.

[Translation — Traduction]

No. 4464. CONVENTION¹ BETWEEN BELGIUM AND SPAIN ON SOCIAL SECURITY. SIGNED AT BRUSSELS, ON 28 NOVEMBER 1956

His Majesty the King of the Belgians and the Head of the Spanish State, Desirous of guaranteeing the benefits of the legislative provisions concerning social security in force in the two Contracting States to the persons to whom these legislative provisions apply or have been applied, have resolved to conclude a convention and for this purpose have appointed as their plenipotentiaries: His Majesty the King of the Belgians:

His Excellency Mr. P.-H. Spaak, Minister of Foreign Affairs;

The Head of the Spanish State:

His Excellency the Count of Casa Miranda, Ambassador of Spain at Brussels, who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

TITLE I GENERAL PRINCIPLES

Article 1

Belgian or Spanish workers who are employed persons or persons treated as employed persons under the legislative provisions concerning social security set out in article 2 of this Convention shall be subject to the said legislative provisions in force, respectively, in Belgium or Spain and shall, together with their dependants, enjoy the benefits thereof in accordance with the laws of each contracting country and, subject to proof of nationality, under the same conditions as the nationals of each country.

Article 2

Paragraph 1

The legislative provisions concerning social security to which this Convention applies shall be:

- 1. In Belgium:
- (a) The laws and regulations concerning sickness and invalidity insurance for wage earners, salaried employees, miners and persons treated as miners, and merchant seamen;

¹ Came into force on 1 July 1958, in accordance with article 35, paragraph 2. The exchange of the instruments of ratification took place at Madrid on 5 May 1958. This Convention is not applicable to the Territories of the Belgian Congo and Ruanda-Urundi.

(b) The laws and regulations concerning the insurance for old-age and early death of wage earners, salaried employees and merchant seamen;

(c) The laws and regulations concerning the special scheme for the retire-

ment of miners and persons treated as miners;

(d) The laws and regulations concerning family allowances for employed persons;

(e) The laws and regulations concerning industrial accidents, including

the legislation relating to seafarers;

(f) The laws and regulations concerning occupational diseases;

(g) The laws and regulations concerning provision for the support of persons involuntarily unemployed and the payment of allowances for waiting periods in respect of the merchant seamen's pool;

2. In Spain:

- (a) The laws and regulations concerning old-age and invalidity insurance, including the special schemes;
- (b) The laws and regulations concerning industrial accident and occupational disease insurance;
 - (c) The laws and regulations concerning sickness and maternity insurance;
- (d) The laws and regulations concerning family allowances, including the special schemes;
 - (e) The workers' mutual-aid scheme;
 - (f) The welfare scheme for large families;
- (g) The laws and regulations concerning technological unemployment, involuntary unemployment in the cotton industry and unemployment caused by electric-power deficiencies.

Paragraph 2

This Convention shall also apply to any laws or regulations which have amended or supplemented, or may in future amend or supplement, the legislative provisions referred to in paragraph 1 of this article.

The above notwithstanding, the Convention shall not apply to:

(a) Laws or regulations covering a new branch of social security, unless an arrangement to that effect is agreed upon between the contracting countries;

(b) Laws or regulations extending existing schemes to new classes of beneficiaries if the Government of the country concerned lodges an objection with the Government of the other country within a period of three months after the official publication of the said laws or regulations.

Article 3

Paragraph 1

Employed persons or persons treated as employed persons under the relevant laws of each contracting country shall, when employed in either country, be subject to the laws in force at their place of employment.

The provision of paragraph 1 shall be subject to the following exceptions:

- (a) Employed persons or persons treated as employed persons who are employed in a country other than that of their normal residence by an undertaking having in the country of such residence an establishment to which the said persons normally belong shall remain subject to the legislative provisions in force in the country in which they are normally employed, on condition that the duration of their employment in the territory of the second country does not exceed twelve months; where, for unforeseeable reasons, this employment is extended beyond the period originally contemplated and exceeds twelve months, the application of the legislative provisions in force in the country in which the said persons are normally employed may, as an exceptional measure, be continued with the agreement of the Government of the country in which the temporary place of employment is situated;
- (b) Employed persons or persons treated as employed persons who belong to public or private transport undertakings in either contracting country and are employed in the other country either permanently or temporarily or as travelling personnel shall be subject exclusively to the provisions in force in the country in which the undertaking has its head office.

Paragraph 3

The supreme administrative authorities of the Contracting States may provide by agreement for further exceptions to the provision of paragraph 1. They may also agree that the provision of paragraph 1 and the exceptions provided for in paragraph 2 shall not apply in specific cases.

Article 1

Paragraph 1

The provision of article 3, paragraph 1, shall be applicable to:

- (1) Employed persons and administrative employees who are employed under contract or temporarily at Spanish diplomatic or consular missions or who are in the personal employ of the heads, members or employees of such missions;
- (2) Employed persons and persons treated as employed persons who are employed at Belgian diplomatic or consular missions or who are in the personal employ of the heads, members or employees of such missions.

Paragraph 2

Employed persons as referred to in paragraph 1 of this article who are of the nationality of the country represented by the diplomatic or consular office and who are posted temporarily in the country where they are employed may opt between the legislation of the country in which they are employed and the legislation of their country of origin.

Paragraphs 1 and 2 shall not apply to diplomatic and consular officers de carrière, including officials on the staff of the chancellery.

TITLE II

SPECIAL PROVISIONS

CHAPTER I

SICKNESS AND MATERNITY INSURANCE

Article 5

Employed persons and persons treated as employed persons who go from Belgium to Spain or vice versa, shall, together with their dependants living with them in the country of the new place of employment, be eligible for sickness insurance benefits in that country if:

- (1) They were certified fit for employment when they last entered that country;
- (2) They have become covered by social insurance since they last entered the territory of the new country of employment;
- (3) They fulfil the conditions required by the legislation of that country, account being taken, where appropriate, of insurance periods or equivalent periods completed under the legislation of the other country.

The provisions of Belgian law under which the grant of benefits is made conditional upon investigation into the origin of the sickness shall not apply to the dependants of such persons.

If the dependants of employed persons or persons treated as employed persons are in hospital at the time when the place of employment is transferred from one country to the other, the country of the former place of employment shall continue to bear the cost of hospitalization and treatment for a period of not more than three months.

Article 6

Employed persons and persons treated as employed persons who go from Belgium to Spain or vice versa shall, together with their dependants living with them in the country of the new place of employment, be eligible for maternity insurance benefits in that country if:

- (1) They were certified fit for employment when they last entered that country;
- (2) They have become covered by social insurance since they last entered the territory of the new country of employment.

(3) They fulfil the conditions required by the legislation of that country, account being taken, where appropriate, of insurance periods or equivalent periods completed under the legislation of the other country.

The above notwithstanding, maternity insurance benefits in cash shall be paid by the social security authority of the scheme under which the person was insured on the 270th day before confinement. Such cash benefits shall be paid direct by the said authority in accordance with the legislative provisions to which it is subject.

Benefits in kind also shall be granted by the social security authority of the former place of employment on condition that the person concerned fulfils the requirements established by the legislation of that country and that at the time of confinement she has been resident in the country of the new place of employment for less than 180 days. In that case, benefits in kind shall be granted by the social security authority of the country of residence, in accordance with the legislation of that country, and shall be refunded by the responsible social security authority of the other country up to the amount for which that authority would have been liable if the legislation of that country had been applied.

If, at the time of confinement, the person concerned has been resident for over 180 days in the country of the new place of employment, benefits in kind shall be granted in conformity with the legislation of the country of residence and that country shall be liable for them.

Article 7

The provisions of article 5 (3) and article 6 (3) shall only apply if employment is taken up in the country of the new place of employment within one month from the termination of employment in the country of the former place of employment.

CHAPTER II

INVALIDITY INSURANCE

Article 8

Paragraph 1

In the case of Belgian or Spanish employed persons and persons treated as employed persons who, in the two contracting countries, have been insured, consecutively or alternately, under one or more invalidity insurance schemes, the insurance periods completed under these schemes or the periods recognized as equivalent to insurance periods by virtue of the same schemes shall, subject to the provisions of article 5 and on condition that there is no overlapping, be aggregated for the purposes both of the determination of the right to benefits in cash or in kind and of the maintenance or recovery of this right.

Invalidity insurance benefits in cash shall be paid in accordance with the provisions of the legislation which was applicable to the person concerned at the time of the interruption of employment followed by invalidity, and the cost shall be borne by the authority which is competent according to the said legislation.

Paragraph 3

Nevertheless, if at the time of the interruption of employment followed by invalidity the disabled person, having been previously insured under an invalidity insurance scheme in the other country, has not been covered by social insurance for at least one year since he last entered the territory of the country in which the interruption of employment has occurred, he shall, due account being taken of the aggregate insurance periods, receive from the competent social security authority of the former country the cash benefits provided for by the legislation of that country on condition that he fulfils the requirements laid down in that legislation. This provision shall not apply where invalidity is the result of an accident.

Article 9

Notwithstanding the provisions of article 8, paragraph 2, the right to invalidity insurance benefits in the case of workers who have been employed in the mines in Belgium and Spain shall be determined in accordance with the provisions of article 14, paragraph 4, where, due account being taken of the aggregate insurance periods, those workers fulfil the conditions for the granting of an invalidity pension under the Belgian legislation concerning the special scheme for the retirement of miners and persons treated as miners and where the periods of insurance in each country have attained the minimum of one year as required by the said paragraph 4.

Article 10

If, on the date of the sickness or accident which caused invalidity, the insured person, being a miner, was employed in the country other than that of the responsible social security authority, account shall be taken, in determining the amount of the invalidity pension, of the wage paid in the country of the responsible social security authority to employed persons of the occupational category to which the person concerned belonged on that date.

Article 11

If, after suspension of the invalidity pension or compensation, the insured person again becomes entitled to benefit, the payment of benefit shall be resumed by the social security authority responsible for the pension or compensation originally granted.

If, after discontinuance of the invalidity pension or compensation, the condition of the insured person justifies the award of an invalidity pension, the said pension shall be paid in accordance with the provisions of article 10.

Article 12

For the purposes of eligibility for invalidity pensions or compensation, the period during which the person concerned is required to have been in receipt of the cash compensation paid by virtue of sickness insurance before the award of the invalidity pension or compensation shall in all cases be that provided for by the legislation of the country in which he was working at the time of the accident or disease which caused the invalidity.

Article 13

An invalidity pension or invalidity compensation shall, where appropriate, be converted into an old-age pension under the conditions laid down by the legislation in virtue of which the said pension or compensation was granted.

CHAPTER III

OLD-AGE AND SURVIVORS (PENSION) INSURANCE

Article 14

Paragraph 1

In the case of Belgian or Spanish employed persons or persons treated as employed persons who have been insured, consecutively or alternately, in the two contracting countries under one or more old-age or survivors (pension) insurance schemes, the insurance periods completed under these schemes or the periods recognized as equivalent to insurance periods by virtue of the said schemes, shall, on condition that they do not overlap, be aggregated for the purposes both of the determination of the right to benefits and of the maintenance or recovery of this right.

The periods to be taken into account as equivalent to insurance periods shall, in each country, be those regarded as such under the legislation of that country.

Any period recognized as equivalent to an insurance period under both Belgian and Spanish legislation shall be taken into account, in the payment of benefits, by the authorities of the country in which the insured person was last employed before the period in question.

Paragraph 2

Where the laws of either contracting country make the grant of certain benefits conditional upon the periods being completed in an occupation subject to a special insurance scheme, only the periods completed under the corresponding special scheme or schemes of the other country shall be aggregated for admission to the grant of these benefits.

Even if in one of the contracting countries there is no special scheme governing the particular occupation, the insurance periods completed in the said occupation under one of the schemes referred to in paragraph 1 shall nevertheless be aggregated.

For the purposes of the special retirement schemes for miners:

- (a) Periods of employment completed in coal mines, or mines and underground quarries in Belgium and Spain shall alone be aggregated;
- (b) Periods regarded as insurance periods under the legislation of each country shall be taken into consideration as equivalent to insurance periods only if they were immediately preceded or followed by periods of employment completed in the mines. The said periods shall be taken into account, for the payment of allowances, by the social security authority of the country where the insured person was employed in the mines immediately before the said periods; if the insured person was not employed in the mines before the said periods, these shall be taken into account by the social security authority of the country where he was employed in the mines immediately after these periods.

Paragraph 3

Where the laws of either contracting country make the grant of certain benefits conditional upon the periods being completed in an occupation subject to a special insurance scheme but the said periods are not sufficiently long to provide entitlement to benefits under such special scheme, those periods shall be regarded as valid for the payment of benefits under the other schemes.

Paragraph 4

The amount of benefit which an insured person may claim from the competent social security authority of either country shall, in principle, be determined by reducing the amount of the benefit to which he would have been entitled if the aggregate of the periods referred to in paragraphs 1 and 2 had been completed under the scheme administered by that authority, the reduction being effected in proportion to the length of the periods actually completed under that scheme.

The social security authority of each country, acting in accordance with the legislation applicable to that authority and taking into account the aggregate of the insurance periods irrespective of the contracting country in which they were completed, shall determine whether the person concerned satisfies the conditions for entitlement to benefits under the said legislation.

The said authority shall determine the amount of the benefits to which the person concerned would be entitled if the aggregate of the insurance periods had been completed exclusively under its own legislation and shall reduce this

amount in proportion to the length of the periods actually completed under that legislation.

Nevertheless, an authority shall not be responsible for a benefit where the periods completed under the relevant legislation do not total one year, being a year comprising the annual minimum number of days of actual employment or of days treated as actual employment as provided by that legislation; in this case the authority of the other country shall assume full responsibility for the benefits to which the insured person is entitled under the legislation applicable to that authority, account being taken of the aggregate of the insurance periods.

Article 15

Paragraph 1

Where an insured person, account being taken of the aggregate of the periods referred to in article 14, paragraph 1, does not simultaneously satisfy the conditions required by the laws of both countries, his right to a pension shall be established under each legislation in proportion as he satisfies those conditions.

Paragraph 2

The periods for which a pension is paid by the country in which the conditions as referred to in paragraph 1 are satisfied shall be treated, for the purposes of eligibility under the legislation of the other country, as insurance periods completed in the first-mentioned country.

Article 16

Paragraph 1

Notwithstanding the provisions of article 14, the grant of the accelerated pension to miners under Belgian legislation shall be reserved for those insured persons who satisfy the conditions prescribed by the said legislation, their service in the Belgian coal mines alone being taken into account.

Paragraph 2

The right to receive concurrently the accelerated pension or an old-age pension under Belgian legislation and a miner's wages shall be recognized, under the conditions and within the limits laid down by the said legislation, only in the case of insured persons who continue to work in the Belgian coal mines.

Article 17

Any insured person may, upon becoming eligible for a pension, waive the benefit of the provisions of article 14 of this Convention. The benefits to which he may be entitled by virtue of the laws of each country shall then be paid separately by the competent social security authorities, independently of the insurance periods or the periods recognized as equivalent thereto completed in the other country.

CHAPTER IV

Provision common to invalidity insurance and old-age (survivors) insurance

Article 18

Where the legislation of one of the contracting countries makes the payment of invalidity pensions or old-age and survivors pensions conditional upon residence qualifications, whether such pensions are payable under article 14 or are calculated on the basis of actual insurance periods, those qualifications shall not apply to Belgian or Spanish nationals so long as they are resident in either of the two contracting countries.

CHAPTER V

Provision common to sickness, maternity, invalidity and old-age (survivors) insurance

Article 19

If, under the legislation of either contracting country, the average wage for the whole or part of the insurance period is taken into account for the payment of benefits, the average wage to be taken into account in computing the benefits to be paid by that country shall be determined on the basis of the wages paid during the insurance period completed in that country.

CHAPTER VI

FAMILY ALLOWANCES

Article 20

If the national legislation makes eligibility for family allowances conditional upon the completion of periods of employment or periods treated as such, account shall be taken of the periods completed in both countries.

CHAPTER VII

INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 21

Where, under the legislation of either contracting country, measures regarding compensation for injury or the revalorization of benefits already granted are subject to provisions which restrict the rights of aliens or impose on aliens loss of right by reason of their place of residence, those provisions shall not be applicable to nationals of the other contracting country who establish their right to the payment of compensation, allowances, annuities or capital sums.

Nevertheless, benefits which are conditional upon need shall be granted only in the territory of the country responsible for their payment.

Article 22

If an employed person who has received compensation for an occupational disease in one of the contracting countries establishes his right to compensation as regards a disease of the same origin in virtue of the laws of his new place of employment in the other country, he must declare to the competent social security authority of the latter country all benefits and compensation previously received in respect of the same disease.

The authority responsible for the new benefits and compensation shall take the previous benefits into account as though they had been paid by that authority.

CHAPTER VIII

SUPPORT OF PERSONS INVOLUNTARILY UNEMPLOYED

Article 23

Employed persons and persons treated as employed persons who go from Belgium to Spain or vice versa shall, in the country of their new place of employment, be eligible for benefits under the legislation concerning the support of persons involuntarily unemployed, if:

- (1) Under the laws and regulations of that country, they have been engaged in gainful employment or in employment treated as such;
- (2) They fulfil the conditions required for eligibility for benefits under the legislation of the country of their new place of employment, account being taken of the period of registration in the country they have left and the period subsequent to their registration in the country of their new place of employment.

CHAPTER IX

FUNERAL BENEFIT

Article 24

The funeral benefit payable on the decease of a pensioner shall be paid by the social security authority to which the insured person was last affiliated on condition that, account being taken of the insurance periods completed in both countries, he satisfies the conditions required for eligibility for such benefit under the legislation applicable to that authority.

TITLE III

GENERAL AND MISCELLANEOUS PROVISIONS

CHAPTER I

ADMINISTRATIVE CO-OPERATION

Article 25

Paragraph 1

The competent authorities and the social security authorities of the two contracting countries shall furnish one another assistance in the same degree as if assistance was being furnished in connexion with their own schemes.

The competent authorities and the social security authorities of each of the contracting countries which shall be empowered to correspond directly with each other for this purpose and to centralize the claims for benefits shall be determined by virtue of an administrative arrangement.

Provision may be made under the said administrative arrangement for payments to be made through a central agency in the country of residence of beneficiaries and for the manner in which such agency, if established, is to be operated.

Paragraph 2

The competent authorities and social security authorities afore-mentioned may, as an accessory measure, have recourse for the same purpose to the diplomatic or consular authorities of the other country.

Paragraph 3

The diplomatic or consular authorities of either country may apply directly to the administrative authorities and the national social-security authorities of the other country with a view to obtaining any information required to protect the interests of their nationals.

Article 26

Paragraph 1

The privilege of exemption from registration or court fees, stamp duties and consular charges granted by the legislation of either contracting country in respect of documents to be produced to the administrative authorities or social security authorities of that country shall be extended to the corresponding documents to be produced, for the purposes of this Convention, to the administrative authorities or social security authorities of the other country.

Paragraph 2

Authentication by diplomatic or consular authorities shall be waived in respect of all certificates, documents and papers required to be produced for the purposes of this Convention.

Article 27

Communications which for the purposes of this Convention are sent by beneficiaries under the Convention to social security authorities or to other authorities or courts of one of the contracting countries having jurisdiction in social security matters shall be drawn up in one of the official languages of either State.

Article 28

Claims and appeals which must be lodged within a prescribed time-limit with a social security authority or other authority of either contracting country authorized to receive claims or appeals in social security matters shall be deemed admissible if they are lodged within the same time-limit with a corresponding authority of the other country. In such cases, the latter authority shall transmit the claims or appeals without delay to the competent social security authority.

Article 29

Nothing herein contained shall affect the regulations of the social insurance schemes referred to in article 2 in respect of the conditions under which aliens may take part in elections in connexion with the functioning of the social security system.

Article 30

Paragraph 1

The supreme administrative authorities of the two contracting countries shall determine by an administrative arrangement the measures to be taken for the application of this Convention.

Paragraph 2

The said authorities shall notify one another in due course of changes that have taken place in the laws or regulations of their respective countries concerning the schemes enumerated in article 2.

Paragraph 3

The competent authorities of the two contracting countries shall notify one another of other arrangements made for the purpose of giving effect to this Convention within their respective countries.

Article 31

For the purposes of this Convention, the supreme administrative authorities in each of the Contracting States shall be:

In Belgium: the Minister of Labour and Social Welfare;

In Spain: the Minister of Labour.

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CHAPTER II

MISCELLANEOUS PROVISIONS

Article 32

The authorities responsible, by virtue of this Convention, for social security benefits shall be held to discharge their responsibility validly by payment in the currency of their country.

In the event of regulations being made in either of the two contracting countries with a view to imposing restrictions upon the exchange of currency, measures shall be taken forthwith, by agreement between the two Governments, to ensure in accordance with the provisions of this Convention the reciprocal transfer of moneys due.

Article 33

Paragraph 1

All difficulties relating to the application of this Convention shall be settled by agreement between the supreme administrative authorities of the Contracting States.

Paragraph 2

If no solution can be arrived at by this means, the disagreement shall be settled by arbitration in accordance with a procedure to be arranged between the Governments. The settlement of the disagreement by the arbitral body shall accord with the fundamental principles and the spirit of this Convention. The decisions of that body shall be binding and final.

Article 34

Paragraph 1

Benefits the payment of which was suspended under the provisions in force in one of the contracting countries by reason of the residence abroad of the persons concerned shall be paid as from the first day of the month following the entry into force of this Convention. Benefits which, for the same reason, could not be granted to the persons concerned shall be awarded and paid as from the same date.

The provisions of this paragraph shall not apply unless the relevant claims are made within two years from the date on which this Convention comes into force.

Paragraph 2

The provisions of the preceding paragraph shall also be applied, at the request of the persons concerned, in cases where no benefits would have been paid if the contingencies covered by the insurance had arisen before the entry into force of this Convention.

The rights of Belgian or Spanish nationals to whom pensions or old-age insurance benefits have been paid before the entry into force of this Convention may be reviewed on an application made by the persons concerned.

As a result of such a review, the beneficiaries shall acquire, as from the first day of the month following the entry into force of this Convention and on condition that the application is submitted within two years, the same rights as they would have acquired if the Convention had been in force when the pension or benefit was awarded.

Paragraph 4

The manner in which the provisions of paragraphs 1, 2 and 3 of this article are to be applied shall be set out in the administrative arrangement referred to in article 30.

Article 35

Paragraph 1

This Convention shall be ratified, and the instruments of ratification shall be exchanged at Madrid as soon as possible.

Paragraph 2

It shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Paragraph 3

This Convention is concluded for a term of one year from the date of its entry into force. It shall continue in force from year to year unless notice of termination is given three months before the expiration of any particular year.

Paragraph 4

In the event of such notice being given, the provisions of this Convention shall remain applicable to acquired rights, notwithstanding any restrictions that may be provided for under the schemes concerned for cases where an insured person is a foreign national or resides in a foreign country.

Paragraph 5

Any rights that are in process of acquisition in respect of insurance periods completed before the date on which this Convention ceases to have effect shall continue to be governed by the provisions of this Convention in conformity with conditions to be decided upon by mutual agreement.

In witness whereof the respective plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done at Brussels on 28 November 1956 in two originals in the French and Spanish languages, both texts being equally authentic.

For Belgium: P.-H. SPAAK

For Spain: Count DE CASA MIRANDA