No. 11902

BRAZIL
and
PORTUGAL

Agreement on social insurance (with supplementary Arrangement). Signed at Lisbon on 17 October 1969

Authentic text: Portuguese.

Registered by Brazil on 27 July 1972.

BRÉSIL
et
PORTUGAL

Accord d'assurance sociale (avec Arrangement complémentaire). Signé à Lisbonne le 17 octobre 1969

Texte authentique : portugais.

Enregistré par le Brésil le 27 juillet 1972.

[TRANSLATION — TRADUCTION]

AGREEMENT ON SOCIAL INSURANCE[1] BETWEEN THE GOVERNMENTS OF PORTUGAL AND THE FEDERATIVE REPUBLIC OF BRAZIL

The President of the Federative Republic of Brazil and the President of the Portuguese Republic,

Desiring to regulate relations between the two States in the matter of social insurance,

Have decided to conclude an Agreement on Social Insurance and for that purpose have appointed as their Plenipotentiaries:

The President of Federative Republic of Brazil :

His Excellency Colonel Jarbas Gonçalves Passarinho, Minister of Labour and Social Insurance;

The President of the Portuguese Republic:

His Excellency Professor Marcello José das Neves Alves Caetano, Acting Minister for foreign Affairs,

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1

1. This Agreement shall apply:

I. In Portugal, to entitlements under:

(*a*) The general of social insurance scheme covering sickness, maternity, invalidity, old age and death insurance and the birth grant;

(*b*) The industrial accidents and occupational diseases scheme;

(*c*) The special insurance schemes established for certain categories, in so far as they relate to the risks or benefits covered by the schemes referred to in the preceding sub-paragraphs and specifically to the scheme for the personnel of concessionary enterprises operating public transport services;

II. In Brazil, to entitlements under the General Social Insurance System relating to :

(*a*) Medical assistance and temporary incapacity for work;

[1] Came into force on 1 December 1970, i.e. the first day of the second month following the date of the exchange of the instruments of ratification, which took place at Brasília on 14 October 1970, in accordance with article 24.

(*b*) Old age;

(*c*) Invalidity;

(*d*) Length of service;

(*e*) Death;

(*f*) Childbirth.

2. The Agreement shall also apply to the coverage provided in laws or provisions which supplement or amend the entitlements referred to in the preceding paragraph.

3. It shall also apply to the cases covered by laws or provisions which extend existing schemes to new occupational categories or which establish new social insurance schemes, provided that the Contracting State concerned lodges no objection to such measures within three months of the date of receiving the notification concerning them from the other Contracting State.

Article 2

The legislation in force in Brazil and Portugal respectively concerning the entitlements specified in article 1 shall also apply to Brazilian workers in Portugal and to Portuguese workers in Brazil, who shall have the same rights and obligations as the nationals of the Contracting State in whose territory they are.

Article 3

1. The principle laid down in article 2 shall subject to the following exceptions :

(*a*) A worker employed by a public or private enterprise having its principal place of business in one of the Contracting States who is sent to the territory of the other for a limited period shall remain subject to the legislation of the first-mentioned State provided that the period of his employment in the territory of the other State does not exceed twelve months. If the period during which he is so employed should, for unforeseeable reasons, be extended beyond the anticipated period of twelve months, the legislation of the Contracting State in which the enterprise has its principal place of business may, as an exceptional measure, continue to apply for a further period of not more than twelve months, subject to the express prior consent of the competent authority of the other State;

(*b*) The flight crews of airlines shall continue to be subject exclusively to the legislation in force in the State in whose territory the airline has its principal place of business;

(*c*) Members of the crews of ships under the flag of one of the Contracting States shall be subject to the legislation in force in that State. Any other person employed by the ship for loading and unloading, repairs and custodial duties shall, when in port, be subject to the legislation of the State within whose jurisdiction the ship is.

2. Nationals of either of the two Contracting States who are engaged in work arising from artistic of cultural co-operation between persons or enterprises in both States shall be subject to the legislation of the State in which such work is done, even if the stay of the persons referred to in this paragraph in the said territory is less than twelve months.

3. The competent authorities of the Contracting States may, by agreement, extend, revoke or amend, in individual cases or for specific occupational categories, the exceptions listed in the preceding paragraph.

Article 4

1. Diplomatic, administrative and technical officials of diplomatic missions and consulates of the Contracting States shall be subject to the legislation of the State to which they belong, with the exception of honorary consuls, who shall be subject to the legislation of the State of residence.

2. Other officials, employees and workers in the service of diplomatic missions and consulates or on the personal staff of one of their members shall also be subject to the legislation of the State in whose service they are employed, unless they elect within twelve months of being engaged, and with the consent in each case of the competent authority of the said State, to be subject to the legislation of the Contracting State in whose territory they are performing their duties. If the employment relationship was in existence on the date of entry into force of this Agreement, the period of twelve months shall be reckoned from that date.

Article 5

1. A Brazilian or Portuguese worker who has qualified in one Contracting State for the entitlements listed in article 1 shall retain them without any restriction vis-à-vis the administering authority of that State when he moves to the territory of the other Contracting State. In the case of moving to a third State, the retention of the said entitlements shall be subject to the conditions determined by the State which grants the benefits to its nationals residing in that third State.

2. A Brazilian or Portuguese worker who, on account of having moved from the territory of one Contracting State to or from the other, has had the benefits corresponding to the entitlements mentioned in paragraph 1 suspended may, on application, recover them by virtue of this Agreement. If the Brazilian or Portuguese worker submits this application within a period of twelve months from the date of entry into force of this Agreement, he shall be entitled to the said benefits from that date. If application is submitted after that period, entitlement to the said benefits shall begin from the date when the application was submitted. In both cases, the rules in force in the Contracting States on the expiration and statutory limitation of rights relating to social insurance shall be taken into consideration.

Article 6

1. A Brazilian or Portuguese worker belonging to the social insurance scheme of one Contracting State shall retain the right to medical assistance during a temporary stay in the territory of the other Contracting State. Dependants of the said worker who accompany him in his transfer shall have the same right.

2. Dependants of a migrant worker who remain in the Contracting State of origin shall be entitled to medical assistance for a period not exceeding twelve months, reckoned from the date of the admission of the said worker to the social insurance of the host Contracting State.

3. The scale of and procedures for the medical assistance provided by the administering authority of the State of temporary residence of a worker and his dependants (paragraph 1) and that provided by the administering authority of the State of residence of the dependants of a migrant worker (paragraph 2) shall be determined in accordance with the respective legislations of the said States. Nevertheless, the duration of the medical assistance shall be that prescribed by the legislation of the State to whose social insurance the worker belongs, subject to the limitation established in the preceding paragraph. The administering authority of the latter State shall be responsible for authorizing major prosthetic appliances or costly medical treatment except in cases of extreme urgency.

4. The expenses relating to the medical assistance referred to in this article shall be borne by the administering authority to which the worker belongs. The method of reimbursing those expenses and determining their amount shall be fixed by agreement between the Contracting States, in accordance with the provisions of a supplementary arrangement to this Agreement.

Article 7

1. A Brazilian or Portuguese worker who has completed insurance periods under the auspices of the legislations of both Contracting States shall have those periods aggregated for the award of invalidity, old age and death benefits.

2. Where, under the legislation of the Contracting States, entitlement to a benefit depends on insurance periods completed in an occupation governed by a special social insurance scheme, only the periods completed in the same occupation in both States shall be aggregated for the award of the said benefits. Where there is no special social insurance scheme for the said occupation in one Contracting State, only the periods in which the occupation has been exercised in the first-mentioned State under the social insurance scheme in force in it shall be taken into consideration for the award of the said benefits in the other State. If, however, the worker does not obtain the right to benefits under the special scheme, the periods completed under that scheme shall be considered as if they had been completed under the general scheme.

3. In the cases specified in paragraphs 1 and 2 of this article, each administering authority shall determine, in accordance with its own legislation and taking into account the aggregation of the insurance periods completed in each State, whether the person concerned satisfies the conditions for entitlement to the benefits provided by that legislation.

4. Where the worker, account being taken of the aggregation, does not simultaneously satisfy the conditions laid down in the legislations of the two Contracting States with respect to the qualifying period, his entitlement shall be determined in accordance under the legislation with account taken only of the period of insurance completed under each scheme.

5. A worker shall be entitled to old-age benefits as soon as he reaches the minimum age specified in the legislation of each of the two Contracting States and has fulfilled the other requirements.

Article 8

1. A Brazilian or Portuguese worker who has completed in the State of origin the qualifying period for the award of cash benefits for sickness shall be granted entitlement to those benefits in the host State on the conditions established by the legislation of the latter State. The same right shall be granted when the sum of the periods of contribution in both States is sufficient to complete the said insurance period.

2. The application of the provision in the preceding paragraph shall be subject to the condition that a period exceeding twelve months shall not have elapsed between the insurance periods completed in both States.

3. The provisions of paragraphs 1 and 2 shall be applicable to cases of the award of childbirth assistance and the birth grant provided for in the legislation of Brazil and Portugal respectively.

Article 9

1. The benefits to which the workers referred to in articles 7 and 8 of this Agreement and their dependants are entitled by virtue of the legislation of both Contracting States, taking into account the aggregation of insurance periods, shall be computed in the following manner:

(*a*) The administering authority of each Contracting State shall determine separately the benefit to which the person concerned would be entitled if the aggregated insurance periods had been completed under its own legislation;

(*b*) The amount to be paid by each administering authority shall be the result of the ratio between the aggregate period and the period completed under the legislation of its own State;

(*c*) The benefit to be granted shall be the sum of the partial amounts which each administering authority is required to pay according to the above computation.

Article 10

When the sum of the partial amounts payable by the administering authorities of the Contracting State is less than the minimum established in the Contracting State in which the benefit is to be paid, the difference between such sum and that minimum shall be made up by the administering authority of the latter State.

Article 11

The person concerned may waive the application of this Agreement when he applies for a benefit. In that case, the value of the benefit shall be determined separately by the administering authority of each Contracting State under the terms of its legislation without regard to the insurance period completed in the other State.

Article 12

Where, for the purpose of assessing the degree of disability in a case of industrial accident or occupational disease, the legislation of one of the Contracting States provides that previous industrial accidents and

occupational diseases shall be taken into account, industrial accidents sustained and occupational diseases contracted previously under the legislation of the other State shall also be taken into account as though they had been sustained or contracted under the legislation of the first-mentioned State.

Article 13

For the purposes specified in this Agreement, the competent authorities shall be deemed to be the ministers responsible for the application of the schemes listed in article 1. These authorities shall keep each other informed of measures taken for the application and development of the Agreement and of any changes which may be introduced in their respective legislations on social insurance matters.

Article 14

1. The competent authorities and the administering authorities of the Contracting States shall assist one another in the application of this Agreement.

2. Medical examinations requested by the administering authority of one Contracting State of beneficiaries who are in the territory of the other State shall be carried out by the administering authority of the latter, at the request of the former and at its expense.

Article 15

1. When the administering authorities of the Contracting States are required to grant cash benefits under this Agreement, they shall do so each in the currency of its own country. Transfers arising out of this obligation shall be effected in accordance with the payments agreements in force between the two States or the machinery established by agreement for that purpose.

2. The payment of benefits shall be effected by the administering authorities of the Contracting States, in accordance with the terms of a supplementary arrangement to this Agreement.

Article 16

1. Any exemption from fees, charges and duties established in social insurance matters by the legislation of one Contracting State shall also be applied for the purpose of this Agreement to the nationals of the other State.

2. All records and documents required to be produced by virtue of this Agreement shall be exempt from legalization by diplomatic, consular and registration authorities, provided they have been processed by one of the administering authorities.

Article 17

In the application of this Agreement, the competent authorities and the administering authorities of the Contracting States shall communicate directly with each other and with beneficiaries or their representatives.

Article 18

Claims and documents submitted by the persons concerned to the competent authorities or to the administering authorities of a Contracting State shall be treated as if they had been submitted to the appropriate authorities or administering authorities of the other Contracting State.

Article 19

Appeals which are to be submitted to a competent institution of one Contracting State shall be deemed to have been submitted in time even if they are submitted to the corresponding institution of the other State, provided their submission takes place within the period laid down by the legislation of the State which must decide on the appeals.

Article 20

The consular authorities of the Contracting States may, without specific authorisation, represent nationals of their own State vis-à-vis the competent authorities and social insurance administering authorities of the other State.

Article 21

The competent authorities of the Contracting States shall settle by agreement any differences and disputes which may arise in the application of this Agreement.

Article 22

In order to facilitate the application of this Agreement, the competent authorities of the Contracting States may set up liaison agencies.

Article 23

1. This Agreement shall remain in force for three years from the date of its entry into force. It shall be considered to be tacitly extended for periods of one year unless written notice of termination is given by the Government of either of the Contracting States at least three months before its expiry.

2. In the event of termination, the provisions of this Agreement and the supplementary arrangements implementing it shall remain in force with respect to acquired rights, provided that application for recognition of those rights has been made within a period of one year from the date of expiry of the Agreement.

3. Cases involving rights which are in the process of acquisition on the date of expiry of the Agreement shall be regulated by the Contracting States.

Article 24

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Brasília.

2. The Agreement shall enter into force on the first day of the second month following the date on which the instruments of ratification are exchanged.

3. The application of this Agreement shall be the subject of supplementary arrangements.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Agreement and thereto affixed their seals.

DONE at Lisbon, on 17 October 1969, in two copies, both texts being equally authentic.

For the Government of the Federative Republic of Brazil:

JARBAS GONÇALVES PASSARINHO

For the Government of Portugal:

MARCELLO JOSÉ DAS NEVES ALVES CAETANO

SUPPLEMENTARY ARRANGEMENT TO THE AGREEMENT ON SOCIAL INSURANCE BETWEEN THE GOVERNMENTS OF PORTUGAL AND THE FEDERATIVE REPUBLIC OF BRAZIL

Pursuant to article 24, paragraph 3, of the Agreement on Social Insurance between the Governments of Portugal and the Federative Republic of Brazil, the competent Portuguese and Brazilian authorities have concluded

the following Supplementary Arrangement for the application of the said Agreement :

Article 1

1. In accordance with the following provisions, the application of the Agreement on Social Insurance shall devolve upon :

(*a*) In Portugal :

— The Trade Union Insurance Fund (Caixa Sindical de Previdência), the Retirement or Insurance Fund (Caixa de Reforma ou de Previdência) or the Insurance and Family Allowance Fund (Caixa de Previdência e Abono de Familia) for sickness and maternity benefits and birth grants;

— The National Pensions Fund (Caixa Nacional de Pensões) for invalidity, old age and death benefits;

— The National Insurance Fund for Occupational Diseases (Caixa Nacional de Seguros de Doenças Profissionais) or the insurance entity with which the enterprise which employs the worker is insured, for benefits relating to industrial accidents and occupational diseases.

(*b*) In Brazil :

— The National Social Insurance Institute (Instituto Nacional de Previdência Social (INPS)) for the entitlements specified in article 1 (*b*) of the Agreement on Social Insurance.

2. In cases which are not provided for, the liaison agencies referred to in the following paragraph shall be responsible for submitting the relevant applications for the consideration of the administering authorities competent in each case under the respective legislation.

3. In order to facilitate the application of the Agreement on Social Insurance, in accordance with the provisions of article 22, the following liaison agencies shall be set up :

In Portugal : The Migrant Workers' Central Social Insurance Fund (Caixa Central de Segurança Social dos Trabalhadores Migrantes)

In Brazil : The National Social Insurance Institute (Instituto Nacional de Previdência Social) (INPS).

Article 2

1. In the cases specified in article 3, paragraph 1 (*a*), of the Agreement on Social Insurance, a certificate on a standard form shall be issued to the enterprise concerned, stating that the worker remains subject to the legislation of the State in which the enterprise in whose service he is has its principal place of business during his period of employment in the territory of the other State.

2. The certificate referred to in the preceding paragraph shall be issued by the competent laison agency.

3. In the event that several workers are sent together by the same enterprise to work temporarily in the territory of the other State a collective certificate shall be issued.

4. The said certificates must be submitted, when required, to the administering authorities of the State in which the temporary work is carried out by the enterprise or, if that is not possible, by the worker himself.

5. If the period of employment in the territory of the other Contracting State exceeds twelve months, the enterprise may request that the worker transferred temporarily to the territory of the other State remain subject to the legislation of the State in which the enterprise has its principal place of business, for a further maximum period of twelve months. The request, on a standard form, shall be submitted to the competent authority of the State in which the enterprise has its principal place of business, so that the latter may request the necessary exemption from the competent authority of the other State.

6. If the enterprise does not avail itself of the right referred to in the preceding paragraph within forty-five days, reckoned from the end of the initial period of twelve months, the worker shall automatically become subject to the legislation of the State in whose territory he is temporarily employed.

Article 3

1. A worker and his dependants who wish to obtain the benefits referred to in articles 7 to 12 of the Agreement on Social Insurance shall submit the appropriate application on a standard form to the administering authority of either of the Contracting States.

2. The application shall specify the work performed by the worker in the territory of each of the Contracting States, and shall indicate the administering authorities to which he belonged and the enterprises by which he was employed in each of the said territories.

3. The competent liaison agency shall transmit to the agency of the other State copies of the standard form, which shall specify the insurance periods in respect of which the applicant can claim under the legislation of the State to which the transmitting agency belongs and shall indicate his entitlements on the basis of the said periods.

4. The administering authority of the other State shall decide on that part of the application which concerns it and shall transmit through

its liaison agency to that of the first State copies of its decision. It shall at the same time return copies of the form, which shall specify the insurance periods in respect of which the applicant can claim under the legislation of the State to which the said authority belongs, and shall indicate his entitlements on the basis of such periods, and those resulting from the aggregation of insurance periods completed in the two Contracting States.

5. The administering authority of the first State, in turn, shall decide on the application and shall transmit its decision to the applicant, together with a copy of the decision of the administering authority of the other State. At the same time, it shall transmit a copy of its decision through its liaison agency to that of the other State, indicating the date on which both decisions were communicated to the applicant.

Article 4

1. The administering authority to which the worker most recently belonged shall compute the benefit, taking account of the insurance periods in the other Contracting State.

2. When the total value of the benefit has been determined in accordance with the applicable legislation, the administering authority referred to in the preceding paragraph shall be responsible for only that proportion of the insurance period within its competence.

3. The benefit relating to the insurance period in the other Contracting State shall be determined in a similar manner, in accordance with the applicable legislation.

4. The total value of the benefit to which the applicant is entitled shall be paid to him by the laiison agency of the Contracting State in whose territory he resides.

5. The proportion of the benefit devolving upon the administering authority of the other Contracting State shall be transferred to the liaison agency of the State of residence of the applicant.

6. Conversion of currency shall be at the official rate in force in the State in which payment is made.

7. The proportions of the benefit devolving upon each administering authority shall be readjusted in accordance with the legal provisions of each Contracting State. Readjustments shall be incorporated into the monthly payments in accordance with the preceding paragraph.

Article 5

The following rules shall be observed for the aggregation of insurance periods :

(*a*) The insurance periods to be taken into account for the purpose of aggregation shall be all those considered as such by the legislation of the Contracting State in which they were completed, even if they have given rise to the award of a benefit.

(*b*) When an insurance period completed under an insurance scheme which is compulsory under the legislation of one Contracting State runs concurrently with either an insurance period completed under an optional insurance scheme or an insurance period during which no work was performed under the legislation of the other Contracting State, only the first period shall be taken into consideration.

(*c*) When a period of compulsory insurance during which no work was performed is completed in one State and runs concurrently with a similar period in the other State, that period shall be considered only by the administering authority of the State to which the applicant compulsorily belonged by reason of work performed immediately prior to the period of concurrent insurance.

Article 6

1. The declaration and the determination of the degree of an applicant's invalidity shall be made by the administering authority which awards the benefit.

2. If necessary, the administering authority of the State which awards the benefit may aks the administering authority of the other State for any medical records and documents concerning the applicant which may be in its possession.

3. In declaring and determining the state and degree of invalidity, the administering authority of each State shall take into account the medical opinions issued by the administering authority of the other State. However, the administering authority of each State shall reserve the right to have the person concerned examined by a doctor designated by it.

4. Costs relating to medical examinations and to determining capacity to work or to earn, and travel expenses and other related costs shall be borne by the administering authority which arranges the examinations, which shall be reimbursed by the administering authority which requested them. Reimbursement shall be made in accordance with the schedule of charges and the rules applied by the authority which carried out the examinations, which shall accordingly submit a statement specifying the costs incurred.

Article 7

For the purposes of the application of the Agreement on Social Insurance :

(*a*) "Administering authority" means the body responsible for administering one or more social insurance schemes;

(*b*) "Worker" means a person engaged in an occupation which comes within the scope of the social insurance legislation, whether he be an employed person or a person within other categories treated as such for the purpose of entitlements in the social insurance system;

(*c*) "Dependant" means a person so described by the Brazilian social insurance legislation and a member of the worker's family entitled to benefits under the Portuguese legislation;

(*d*) "Insurance period" means that period of the worker's coverage by the social insurance system which is taken into account for the award of benefits in accordance with the legislation applicable in each of the Contracting States.

Article 8

1. A national of one Contracting State residing in a third State who applies for benefits under the legislation of the other Contracting State and the Agreement on Social Insurance shall submit the application to the liaison agency of the latter State.

2. If the application is submitted to the administering authority of the State of the applicant's nationality, that authority shall forward it immediately to the agency referred to in the preceding paragraph, stating the date of its receipt or submission. This date shall be considered the effective date for the purposes of the applicable legislation.

Article 9

1. The Migrant Workers' Central Social Insurance Fund (Caixa Central de Segurança Social dos Trabalhadores Migrantes) shall pay, on behalf of the National Social Insurance Institute of Brazil (Instituto Nacional de Previdência Social do Brasil), the benefits awarded by that authority to Brazilian and Portuguese nationals residing in Portugal.

2. The National Social Insurance Institute of Brazil shall proceed in the same manner in relation to Portuguese and Brazilian nationals residing in Brazil, in similar circumstances.

Article 10

Within sixty days of the entry into force of the Agreement on Social Insurance, the liaison agencies shall establish a joint commission, composed of officials of the authorities concerned, in order to draw up administrative rules and set in motion the services for the application of this Agreement, and to implement the provisions of article 6, paragraph 4, of the Agreement on Social Insurance.

The joint commission shall meet first at Rio de Janeiro and afterwards at Lisbon for successive periods not exceeding thirty days.

The relevant costs shall be borne by the liaison agencies concerned.

Article 11

1. In the application of the provisions of this Agreement, the forms which the liaison agencies of the Contracting States shall, by agreement, devise shall be used.

2. If applicants for or recipients of benefits do not attach the necessary documents or certificates to their applications, or if those documents or certificates are incomplete, the liaison agency which receives the application may apply to the agency in the other Contracting State in order to complete the said documentation.

3. The liaison agencies of both Contracting States shall draw up, by agreement, the rules of procedure for the implementation of this Supplementary Arrangement.

This arrangement shall enter into force on the same date as the Agreement. It shall have the same duration as the Agreement.

DONE at Lisbon, on 17 October 1969, in two copies.

For the Government of the Federative Republic of Brazil:

JARBAS GONÇALVES PASSARINHO
CARLOS SILVESTRE DE OURO PRÊTO

For the Government of Portugal:

JOSÉ GONÇALVES DE PROENÇA