

No. 14039

**BRAZIL
and
SPAIN**

**Agreement on social insurance (with exchange of notes).
Signed at Brasília on 25 April 1969**

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 20 May 1975.

**BRÉSIL
et
ESPAGNE**

**Convention relative à la sécurité sociale (avec échange de
notes). Signée à Brasília le 25 avril 1969**

Textes authentiques : portugais et espagnol.

Enregistrée par le Brésil le 20 mai 1975.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENTS OF THE FEDERATIVE REPUBLIC OF BRAZIL AND SPAIN ON SOCIAL INSURANCE

The President of the Federative Republic of Brazil and the Head of the Spanish State,

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 this purpose have appointed as their plenipotentiaries:

The President of the Federative Republic of Brazil: Mr. José de Magalhães Pinto, Minister of State for Foreign Affairs, and Mr. Jarbas Gonçalves Passarinho, Minister of State for Labour and Social Insurance;

The Head of the Spanish State: Mr. Jesús Romeo Gorría, Minister of Labour; who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

PART I. GENERAL PROVISIONS

Article 1. 1. This Agreement shall apply:

- (a) In Spain, to benefits under the General Scheme, the Special Agrarian Scheme and the Special Seamen's Scheme, with respect to:
- (a) medical and health care and temporary incapacity for work;
 - (b) old age;
 - (c) disability;
 - (d) death;
 - (e) childbirth.
- (b) In Brazil, to benefits under the General Social Insurance Scheme with respect to:
- (a) medical and health care and temporary incapacity for work;
 - (b) old age;
 - (c) disability;
 - (d) superannuation;
 - (e) death;
 - (f) childbirth.

2. This Agreement shall also apply to cases covered by any laws and provisions supplementing or altering the benefits referred to in the preceding paragraph.

3. It shall also apply to cases covered by laws and provisions extending existing schemes to new occupational categories or establishing new social insurance schemes, provided that the Contracting State concerned raises no objection to such

¹ Came into force on 1 April 1971, i.e., the first day of the second month that followed the date of the exchange of the instruments of ratification, which took place at Madrid on 4 February 1971, in accordance with article 23 (1) and (2).

measures within a period of three months from the date of receipt of notification of the measures from the other Contracting State.

Article 2. The legislation providing for the benefits referred to in article 1 in force in Brazil and Spain respectively shall apply also to Brazilian workers in Spain and Spanish workers in Brazil, who shall have the same rights and obligations as nationals of the Contracting State in whose territory they are living.

Article 3. 1. The principle laid down in article 2 shall be subject to the following exceptions:

- (a) Wage-earning workers or persons treated as such who are employed by a public or private enterprise having its head office in one of the Contracting States and are sent to the territory of the other for a limited period shall continue to be subject to the legislation of the former State, provided that their stay for the purposes of their work in the other State does not exceed 12 months. If for unforeseeable reasons the duration of such stay exceeds 12 months, the legislation in force in the State in which the enterprise has its head office may, as an exceptional measure, continue to apply, subject to the express consent of the competent authority of the other State, for a further period of not more than 12 months.
- (b) Airline flight personnel shall be subject solely to the legislation in force in the State in which the airline has its head office.
- (c) Crew members of a ship registered in one of the two Contracting States shall be subject to the provisions in force in that State. All other persons employed for the purpose of loading, unloading, repairing or guarding a ship while in port shall be subject to the legislation of the State within whose jurisdiction the ship lies.

2. The competent authorities of the Contracting States may, in specific cases or for specific occupational categories, decide by agreement to add to, eliminate or amend the exceptions set out in the preceding paragraph.

Article 4. 1. Diplomatic, administrative and technical personnel of the diplomatic and consular missions of the Contracting State shall continue to be subject to the legislation of the sending State, with the exception of honorary consuls who shall remain subject to the legislation of the State of residence.

2. Other officials, employees and workers in the service of diplomatic and consular missions or in the personal service of a member of such missions shall also be subject to the legislation of the State by which they are employed, unless they elect within three months of their engagement, where required, with the consent of the competent authority of the said State, to be covered by the legislation of the Contracting State in whose territory they are employed. If the date of engagement occurs prior to the entry into force of this Agreement, the period of three months shall be reckoned from the date of its entry into force.

Article 5. 1. Brazilian and Spanish workers who are entitled to the benefits enumerated in article 1 in one of the Contracting States shall retain such entitlement without any restrictions whatsoever vis-à-vis the insurance authority of that State should they move to the territory of the other Contracting State. In the event of moving to a third State, the preservation of such entitlement shall be subject to the same conditions as are applied by the country granting the benefit to its nationals resident in the third State in question.

2. Brazilian or Spanish workers, the supply of whose benefits under article 1 has been suspended as a result of their moving to the territory of the other Contract-

ing State, may recover the benefits by claiming them by virtue of this Agreement. If the claim is submitted within a period of six months after the date of the entry into force of this Agreement, the Brazilian or Spanish worker shall be entitled to the benefits in question as from that date. If the claim is submitted after that period, entitlement to benefits shall commence on the date of the submission of the claim. In both cases account shall be taken of the rules in force in both Contracting States regarding the expiry of and time limitations on social insurance entitlements.

Article 6. 1. Wage-earning workers or persons treated as such, whether Brazilian or Spanish, who have joined the social insurance scheme of one Contracting State shall be entitled to medical and health care should the condition of their health so require when they are temporarily in the territory of the other Contracting State on leave with pay. Dependants accompanying the worker during his stay in the other country shall also be entitled to this benefit.

2. The dependants of a migrant worker who remain in the Contracting State of origin shall be entitled to medical and health care for a period of not more than 12 months from the date of his joining the social insurance scheme of the receiving Contracting State.

3. The scope of and procedures for the medical and health care provided by the insurance authority of the State in which the worker or his dependants (paragraph 1) are temporarily resident and of that provided by the insurance authority of the State of residence of the dependants of a migrant worker (paragraph 2) shall be determined in accordance with the legislation of those States. However, the period during which medical and health care is provided shall be that laid down by the legislation of the State under whose social insurance scheme the worker is insured, taking into account the limitation laid down in the preceding paragraph. The insurance authority of that State shall also be responsible for authorizing the provision of major prosthetic devices and expensive medical procedures, except in cases of absolute urgency.

4. The costs of the medical care referred to in this article shall be borne by the insurance authority with which the worker is insured. Both the method of their reimbursement and the method of determining the costs shall be established by agreement between the Contracting States in accordance with the provisions of administrative agreements supplementing this Agreement.

PART II. SPECIAL PROVISIONS

Article 7. 1. For wage-earning workers or persons treated as such, whether Brazilian or Spanish, who have been subject consecutively or alternately to the legislation of the Contracting States, the insurance periods or periods treated as such completed under the legislation of each of the Contracting States shall be aggregated for the purpose of disability, old-age, superannuation and survivors' benefits.

2. When, under the legislation of the Contracting States, entitlement to a benefit depends on insurance periods completed in an occupation covered by a special social insurance scheme, only those periods completed in the occupation in question in each State shall be aggregated for the purpose of granting such benefits. When a special social insurance scheme for the occupation in question does not exist in one of the Contracting States, only periods completed in such occupation in that State under the social insurance scheme in force shall be taken into account for the purpose of granting the said benefits in the other State. If, however, the insured person has not acquired entitlement to benefits under the special scheme, periods com-

pleted under that scheme shall be treated as if they had been completed under the general scheme.

3. In the cases referred to in paragraphs 1 and 2 of this article, each insurance authority shall determine, in accordance with its own legislation and on the basis of the aggregate insurance periods completed in both States, whether the insured person meets the requirements for eligibility for the benefits provided under its legislation.

4. The age at which old-age or superannuation pensions shall be granted under the terms of this article shall be governed by the legislation of the State in which the insured person last worked and in which he applied for the benefit, provided that he made contributions in that State for at least five years and has reached the age of 60.

5. Brazilian or Spanish workers who have completed in the State of origin the waiting period required for eligibility for the benefit for temporary incapacity for work and the birth grant shall also be entitled to such benefits in the receiving State under the conditions laid down in the legislation of the latter State. They shall also be entitled to such benefits when the sum of the contributory periods in both States is equivalent to the waiting period.

Article 8. 1. The benefits which the insured persons referred to in article 7 of this Agreement or their heirs may claim under the legislation of both Contracting States on the basis of the aggregation of insurance periods shall be paid in the following manner:

- (a) The insurance authority of each Contracting State shall separately determine the amount of the benefit to which the insured person would be entitled if the aggregated insurance periods had been completed under its own legislation.
- (b) The share to be borne by each insurance authority shall reflect the ratio of the period completed under the legislation of its State to the aggregated insurance period.
- (c) The benefit granted shall be the sum of the shares payable by each insurance authority calculated by the above method.

Article 9. If the sum of the shares payable by the insurance authorities of the Contracting States is less than the minimum laid down in the Contracting State in which the benefit is to be granted, the difference shall be borne by the insurance authority of the latter State.

Article 10. Benefits shall be paid by the insurance authorities of each Contracting State in the manner laid down in administrative agreements supplementing this Agreement.

Article 11. An insured person may waive the application of this Agreement when applying for a benefit. In such cases the amount of the benefit shall be determined separately by the insurance authority of each Contracting State in accordance with its legislation without regard to insurance periods completed in the other State.

PART III. MISCELLANEOUS PROVISIONS

Article 12. For the purposes of this Agreement, competent authorities shall mean the Ministers of State responsible for administering the schemes referred to in article 1. These authorities shall provide each other with all information or measures taken to apply and carry out this Agreement.

Article 13. 1. The competent authorities and the insurance authorities of the Contracting States shall assist each other in the application of this Agreement.

2. Medical examinations required by the insurance authority of one Contracting State which concern insured persons who are in the territory of the other State shall be carried out by the insurance authority of the latter State at the request and expense of the insurance authority requiring them.

Article 14. When the insurance authorities of the Contracting States are required to pay cash benefits under this Agreement, they shall do so in the currency of their own country. Transfer payments resulting from this obligation shall be made in accordance with the payment agreements in force between the two countries or with procedures agreed upon for that purpose.

Article 15. 1. Exemption from duties, charges and fees relating to social insurance provided for in the legislation of one of the Contracting States shall also apply for the purposes of this Agreement to the nationals of the other State.

2. All documents and papers required to be submitted under this Agreement shall be exempt from the requirements of official translation, certification and legalization by diplomatic or consular authorities and of public registration provided that they have been submitted through one of the insurance authorities.

Article 16. For the purposes of this Agreement, the competent authorities and the insurance authorities of the two Contracting States shall communicate directly with each other and with insured persons or their representatives; any correspondence shall be drawn up in their respective official languages.

Article 17. Claims and documents submitted by insured persons to the competent authorities or the insurance authorities of one Contracting State shall be treated as though they had been submitted to the corresponding authorities or insurance authorities of the other Contracting State.

Article 18. Appeals which are required to be lodged with a competent authority in one of the Contracting States shall be considered to have been lodged by the prescribed date even if they are lodged with the corresponding authority in the other State, provided that they are lodged within the period prescribed by the legislation of the State in which the appeals are to be ruled upon.

Article 19. The consular authorities of the two Contracting States may, without special power of attorney, represent nationals of their own State vis-à-vis the competent authorities and social insurance authorities of the other State.

Article 20. The competent authorities of the Contracting States shall settle by agreement any differences or disputes which arise in the application of this Agreement.

Article 21. The competent authorities of both Contracting States may establish liaison bodies for the purpose of facilitating the application of this Agreement.

Article 22. 1. This Agreement shall remain in effect for a period of three years from the date of its entry into force. It shall be deemed to be renewed by tacit agreement for periods of one year unless it is denounced in writing by the Government of either Contracting State at least three months before the date of expiry.

2. In the event of denunciation, the provisions of this Agreement and the administrative agreements pertaining thereto shall remain applicable to acquired rights, provided that application for recognition of such rights has been made within one year of the expiry of the Agreement.

3. Situations involving rights that are in process of acquisition at the date of expiry of this Agreement shall be settled by agreement between the two Contracting States.

Article 23. 1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Madrid.

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

3. The application of this Agreement shall be the subject of administrative agreements.

Article 24. This Agreement supersedes articles 44 to 51 inclusive of the Agreement on migration between Brazil and Spain signed at Madrid on 27 December 1960¹ but shall not affect any rights acquired in accordance with those articles, the validity of which shall be governed by the provisions of article 58, paragraph 3, of the said Agreement.

DONE at Brasília on 25 April 1969, in two copies in Portuguese and Spanish, both texts being equally authentic.

For the Federative
Republic of Brazil:

JOSÉ DE MAGALHÃES PINTO
JARBAS GONÇALVES PASSARINHO

For the Spanish State:

JESÚS ROMEO GORRÍA

EXCHANGE OF NOTES

I

Brasília, 25 April 1969

No. 36

Sir,

In accordance with article 23, paragraph 3, of the Agreement on Social Insurance between Spain and the Federative Republic of Brazil,² I have the honour to propose on behalf of my Government the following administrative agreement for the application of the said Agreement:

PART I. GENERAL PROVISIONS

Article 1. 1. The application of the Agreement shall, in accordance with the following provisions, be the responsibility of:

(a) In Spain:

- the National Insurance Institute (INP) in respect of medical and health care, insurance for temporary incapacity for work and birth grant under the general scheme,

¹ United Nations, *Treaty Series*, vol. 658, p. 39.

² See p. 353 of this volume.

and old-age, disability and death benefits under the special agrarian social insurance scheme;

- the Workers Mutual Aid Scheme in respect of disability, old-age and death benefits under the general scheme;
- the Seamen's Social Institute in respect of disability, old-age and death benefits under the special seamen's scheme;

(b) In Brazil:

- the National Social Insurance Institute (INPS) in respect of the benefits referred to in article 1, subparagraph (b), of the Agreement.

In cases other than the foregoing, the National Insurance Institute, as liaison body, shall be responsible for submitting the claims concerned for consideration by the insurance authority having competence under Spanish legislation.

2. In order to facilitate the application of the Agreement, the following shall be designated liaison bodies for the purpose of the provisions of article 21:

- in Spain: National Insurance Institute (INP);
- in Brazil: National Social Insurance Institute (INPS).

Article 2. 1. In the cases referred to in article 3, paragraph 1 (a), of the Agreement, a certificate shall be issued to the enterprise on a special form stating that during the temporary employment of workers in the territory of the other State, the workers shall continue to be subject to the legislation of the State in which the head office of their employer is situated.

2. The certificate referred to in the preceding paragraph shall be issued:

- (a) in Spain: by the National Insurance Institute, as liaison body, for workers temporarily assigned to Brazil;
- (b) in Brazil: by the National Social Insurance Institute, as liaison body, for workers temporarily assigned to Spain.

3. In the event of the assignment by a single enterprise of a group of workers to the territory of the other State, a collective certificate shall be issued.

4. The aforementioned certificates shall be submitted, when required by the enterprise or, failing that, by the worker himself, to the insurance authorities of the State in which he is temporarily employed.

5. Should the period of employment in the territory of the other State exceed 12 months, the enterprise may request that the workers temporarily assigned to the territory of the other State shall continue to be subject to the legislation of the State in which it has its head office for a further period of up to 12 months. The request, on a special form, shall be submitted to the competent authority of the State in which the enterprise has its head office so that it may apply for the relevant exemption from the competent authority of the other State.

6. Unless the enterprise avails itself of the right referred to in the preceding paragraph within 45 days of the expiry of the initial 12-month period, the workers shall automatically become subject to the legislation of the State in whose territory they are temporarily employed.

PART II. SPECIAL PROVISIONS

Article 3. 1. Insured persons and their heirs who wish to claim benefits under the provisions of part II of the Agreement shall submit the application on a special form to the insurance authority of either Contracting State.

2. The application shall give details of the applicant's service in the territory of each of the Contracting States, including the names of the insurance authorities with which he was insured and of the employers or enterprises for which he worked in each territory.

3. The relevant liaison body shall transmit to the liaison body of the other State copies of a special form containing details of the insurance periods in respect of which the applicant may claim under the legislation of the State of the transmitting liaison body and stating the benefits which may be granted on the basis of said periods.

4. The insurance authority of the other State shall decide on that part of the application which concerns it and shall transmit to the liaison body of the first State copies of its decision. It shall also return copies of the form containing details of the insurance periods in respect of which the authority belongs, with a statement of the applicant's entitlements in respect of those periods and his entitlements in respect of the aggregate insurance periods completed in both Contracting States.

5. The insurance authority of the first State shall then decide on the application and shall convey its decision to the applicant, together with a copy of the decision of the insurance authority of the other State. It shall also transmit a copy of its decision to the liaison body of the other State, stating the date on which the applicant was notified of both decisions.

Article 4. 1. The insurance authority with which the worker was last insured shall calculate the amount of the benefit taking into account contributory periods in the other Contracting State.

2. After determining the total amount of the benefit in accordance with the legislation in force, the insurance authority with which the worker was last insured shall be liable for only such part of that amount as is proportionate to the contributory period completed in its State.

3. The benefits due in respect of the contributory period completed in the other Contracting State shall be calculated in the same manner in accordance with the legislation in force.

4. The share of the benefit to be borne by the insurance authority of one of the Contracting States shall be paid to the beneficiary through the insurance authority of the other Contracting State in the currency of the latter State and in equal monthly payments. The currency conversion shall be effected at the beginning of each 12-month period at the official exchange rate in effect in the State whose insurance authority makes the payments. Annual adjustments shall be made for variations in the exchange rate which occur during such period.

5. The shares of the benefit to be borne by each of the insurance authorities shall be adjusted in accordance with the legislation of each Contracting State. Adjustments shall be reflected in the monthly payments made in accordance with the preceding paragraph.

Article 5. The following rules shall be applied in aggregating insurance periods:

- (a) For the purpose of aggregating insurance periods account shall be taken of all periods considered as insurance periods by the legislation of the Contracting State in which they were completed, even if they have given rise to the granting of a benefit.
- (b) When an insurance period completed under an insurance scheme that is compulsory under the legislation of a Contracting State coincides with an insurance period completed under a voluntary insurance scheme or with an insurance period during which the insured was not employed (period treated as an insurance period) under the legislation of the other Contracting State, only the former period shall be taken into account.
- (c) When a compulsory insurance period completed in one State during which the insured person was not employed (period treated as an insurance period) coincides with a similar period in the other State, such period shall be taken into account only by the insurance authority of the State in which the applicant was insured under a compulsory scheme and employed immediately prior to the period in question. Where there has been no period of concurrent compulsory insurance, the period in question shall be taken into account only by the insurance authority of the State in which the person concerned was insured under a compulsory scheme by virtue of employment after the period in question.

Article 6. 1. The insurance authority which is required to grant the benefit shall be responsible for verifying and assessing the degree of an applicant's disability.

2. The insurance authority of the State which will be providing the benefit may request the insurance authority of the other State to furnish such of the applicant's medical history and records as are in its possession.

3. In order to verify and to determine the state and degree of disability of an applicant or a person in receipt of a retirement or disability pension, the insurance authority of each State shall take into account the medical opinions given by the insurance authority of the other State. The insurance authority of each State shall, however, reserve the right to require such applicant or person in receipt of a pension to be examined by a doctor of its choice.

4. The cost of the medical examination and any others incurred for the purpose of assessing capacity for work or earning capacity, travel and subsistence expenses and any other related costs shall be paid by the insurance authority carrying out such examination and reimbursed by the insurance authority which requested the examination. Reimbursement shall be made on the basis of the schedule of fees and the rules applied by the insurance authority which performed the examination on presentation of a detailed account of the costs involved. No reimbursement shall be made for inspections or examinations that have not been requested by the insurance authority of the other State.

PART III. MISCELLANEOUS PROVISIONS

Article 7. For the purposes of the Agreement:

(a) Insurance authorities shall mean bodies responsible for administering one or more social insurance schemes;

(b) Wage-earning workers or persons treated as such shall mean persons covered by social insurance legislation, whether they work for an employer or are workers in other occupational categories treated as so working for the purpose of social insurance entitlements;

(c) Insurance periods or periods treated as such shall mean the time that is required or taken into account for the purpose of qualifying for benefits under the applicable legislation in each of the Contracting States.

Article 8. For the purpose of applying the provisions of article 13 of the Agreement the insurance authorities of the Contracting States shall transmit to each other copies of documents requested by interested persons.

Article 9. 1. Nationals of one Contracting State residing in a third State who claim benefits under the legislation of the other Contracting State and the provisions of the Agreement shall submit their claims to the insurance authority of the latter State.

2. If the claim is submitted to the insurance authority of the State of which the applicant is a national, it shall immediately be transmitted to the insurance authority referred to in the preceding paragraph with an indication of the date on which it was received or submitted. That date shall be considered valid for the purposes of the applicable legislation.

Article 10. 1. The National Insurance Institute of Spain shall disburse on behalf of the National Social Insurance Institute of Brazil the benefits granted by the latter to Spaniards and Brazilians residing in Spain.

2. The National Social Insurance Institute of Brazil shall perform the same function vis-à-vis similarly qualifying Spaniards and Brazilians residing in Brazil.

Article 11. Within 60 days of the later ratifications of the Agreement, the National Insurance Institute of Spain and the National Social Insurance Institute of Brazil, as liaison bodies, shall establish a Joint Commission composed of officials of the authorities concerned for the purpose of drawing up administrative rules, setting up units for the implementation of

this administrative Agreement and implementing the provisions of article 6, paragraph 4, of the Agreement.

The Joint Commission shall meet first at Madrid and thereafter at Rio de Janeiro for periods not exceeding 30 days.

The relevant costs shall be borne by the insurance authorities concerned.

Article 12. 1. For the purposes of the provisions of this administrative agreement, forms drawn up by agreement by the liaison bodies of the two Contracting States shall be used. The required number of copies shall also be established by agreement.

2. If applicants for, or persons receiving, benefits fail to submit the necessary documents or certificates with their applications, or if their applications are incomplete, the insurance authority which receives the application may request the insurance authority of the other Contracting State to supply the documents required.

3. The liaison bodies of both Contracting States shall establish by agreement the procedural rules for implementing this administrative Agreement.

If this proposal is acceptable to you, my Government will consider this note and your reply as constituting an agreement between our Governments, which will enter into force on the same day as the Agreement on social insurance and remain in effect for the same period as that Agreement.

Accept, Sir, etc.

JOSÉ LUIS LITAGO

H.E. Mr. José de Magalhães Pinto
Minister of State for Foreign Affairs
of the Federative Republic of Brazil

II

25 April 1969

DEOC/DCI/DAI/28/550.41 (84)

Sir,

I have the honour to acknowledge receipt of your note No. 36 of today's date which reads as follows:

[*See note I*]

2. In reply, I have the honour to inform you that the Brazilian Government agrees to the proposal contained in your note, which, together with this reply, will be deemed to constitute a formal agreement on the subject between our two countries.

Accept, Sir, etc.

JOSÉ DE MAGALHÃES PINTO

Mr. José Luis Litago y Martínez-Bellido
Chargé d'Affaires a.i. of Spain