

No. 14042

**NETHERLANDS
and
SPAIN**

**Convention on social security (with final protocol). Signed at
Madrid on 5 February 1974**

**Administrative Agreement for the implementation of the
above-mentioned Convention (with protocol). Signed at
Madrid on 5 February 1974**

Authentic texts: Dutch and Spanish.

Registered by the Netherlands on 20 May 1975.

**PAYS-BAS
et
ESPAGNE**

**Convention sur la sécurité sociale (avec protocole final).
Signée à Madrid le 5 février 1974**

**Arrangement administratif pour l'application de la Conven-
tion susmentionnée (avec protocole). Signé à Madrid le
5 février 1974**

Textes authentiques : néerlandais et espagnol.

Enregistrés par les Pays-Bas le 20 mai 1975.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SPANISH STATE ON SOCIAL SECURITY

The Government of the Kingdom of the Netherlands, and
The Government of the Spanish State,

Desiring to adapt existing relations between the Netherlands and Spain in the field of social security to accord with the development of the legislation of the two States since the signature of the Convention on social security at Madrid on 17 December 1962,² have decided to conclude a Convention to replace that instrument and for that purpose have agreed on the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1. For the purpose of this Convention:

(a) "Territory" means:

In relation to Spain, the peninsular provinces, the Balearic Islands, the Canary Islands and the Spanish provinces in North Africa;

In relation to the Netherlands, the European territory of the Kingdom;

(b) "Legislation" means existing and future laws, ordinances and regulations relating to the social security schemes and branches referred to in article 2, paragraph 1;

(c) "Competent authority" means:

In relation to Spain, the Minister of Labour;

In relation to the Netherlands, the Minister of Social Affairs; with regard to sickness insurance cash benefits, the Minister of Public Health and Environmental Protection;

(d) "Residence" means a place of habitual abode;

(e) "Place of abode" means a place of temporary abode;

(f) "Competent institution" means the institution with which the insured person is insured at the time of the claim to benefit or with which he has title to benefit or would have title if he were resident in the territory of the Contracting Party in which the said institution is situated;

(g) "Institution of the place of residence" means the institution competent to provide the benefits in question at the place of residence of the person concerned in accordance with the legislation of the Contracting Party applied by the said institution or, where no such institution exists, the institution designated by the competent authority of the Contracting Party in question;

(h) "Institution of the place of abode" means the institution competent to provide the benefits in question at the place of abode of the person concerned in accordance with the legislation of the Contracting Party applied by the said institution or where no such

¹ Came into force on 1 December 1974, i.e. the first day of the second month after the month of receipt of the last of the notifications by which each of the Contracting Parties notified the other of its fulfilment of the necessary constitutional requirements, in accordance with article 48.

² United Nations, *Treaty Series*, vol 499, p. 227.

institution exists, the institution designated by the competent authority of the Contracting Party in question;

(i) "Family members" means individuals defined or accepted as such by the legislation of the Contracting Party in whose territory they reside; however, if this legislation regards as family members only those individuals who live with the person concerned, this condition shall be regarded as fulfilled where such individuals are mainly dependent on the person concerned;

(j) "Survivors" means individuals defined or accepted as such by the legislation under which the benefits are payable;

(k) "Insurance periods" means periods of contribution, employment, professional activity or residence which are defined or accepted as insurance periods by the legislation under which they have been completed or are deemed to have been completed, as well as all assimilated periods in so far as they are recognized by the said legislation as equivalent to insurance periods;

(l) "Benefits", "pensions" or "annuities" mean any benefit, pension or annuity including any supplements from public funds, additional allowances to meet wage or price levels or supplementary payments, as well as lump-sum payments made in lieu of pensions or annuities;

(m) "Employed person" means a wage-earner, a self-employed person or a person treated as a wage-earner under the applicable legislation;

(n) "Death allowance" means a lump-sum paid in the event of death.

Article 2. 1. This Convention shall apply:

A. In Spain:

(a) To the general social security scheme legislation concerning:

1. Ordinary sickness, occupational diseases, maternity, temporary loss of working capacity and industrial and other accidents;
2. Temporary and permanent invalidity;
3. Old-age, death and survivors' insurance;
4. Family allowances;
5. Unemployment;
6. Retraining and rehabilitation of invalids;
7. Social services;

(b) To the legislation governing the special schemes applicable to:

1. Agricultural workers;
2. Seamen;
3. Domestic servants;
4. Coal-miners;
5. Self-employed persons;
6. Railway workers;
7. Artists;
8. Commercial travellers;
9. Writers;
10. Students;
11. Bullfighters.

B. In the Netherlands, to the legislation concerning:

- (a) Sickness and maternity benefits (including benefits in respect of accidents and occupational diseases);
- (b) Benefits in respect of loss of working capacity (invalidity, industrial accidents and occupational diseases);
- (c) Old-age benefits;
- (d) Survivors' benefits;
- (e) Unemployment benefits;
- (f) Family allowances.

2. This Convention shall also apply to all laws or regulations by which the legislation specified in paragraph 1 of this article may be amended or supplemented. It shall further apply to:

- (a) Laws or regulations covering a new branch of social security, provided that an agreement to that effect is concluded between the Contracting Parties;
- (b) Laws or regulations extending existing schemes to new categories of beneficiaries, provided that the Government of the Contracting Party concerned raises no objection within a period of three months after the date of notification of the official publication of such laws or regulations.

Article 3. 1. The provisions of this Convention shall apply to Spanish and Netherlands employed persons who are or have been subject to the legislation of one of the Contracting Parties and to the members of their families and their survivors.

2. The provisions of this Convention shall not apply to members of diplomatic or consular missions or to chancellery officials, if any, provided that they are nationals of the sending State.

Article 4. Nationals of one of the Contracting Parties to whom the provisions of this Convention apply shall be subject to the requirements and entitled to the advantages of the legislation specified in article 2 on the same conditions as nationals of the other Party.

Article 5. Save as otherwise provided in this Convention, invalidity, old-age and survivors' benefits, annuities in respect of industrial accidents or occupational diseases, family allowances and death allowances acquired under the legislation of one of the Contracting Parties shall not be reduced, modified, suspended, discontinued or withheld on the ground that the beneficiary is not resident in the territory of that Party.

Article 6. 1. Save in the case of old-age and survivors' benefits, this Convention shall not operate to confer or maintain any right to receive more than one benefit of the same nature or more than one benefit relating to the same compulsory insurance period.

2. The provisions of the legislation of one Contracting Party concerning the reduction, suspension or discontinuance of benefits in the event that the beneficiary is simultaneously in receipt of other benefits or other income or carries on an occupation shall apply to him even where the benefits in question are payable under a scheme of the other Contracting Party or where the income is received from an occupation carried on in the territory of the other Contracting Party. However, this rule shall not apply where the beneficiary receives old-age or survivors' benefits under the provisions of chapter 3, section 1 or 2.

3. Where the application of paragraph 2 results in the reduction or suspension of the benefits payable under the legislation of both Contracting Parties, the amount of each such benefit affected by the reduction or suspension shall not exceed one half of the amount which is not to be paid.

TITLE II. PROVISIONS TO DETERMINE WHICH LEGISLATION IS APPLICABLE

Article 7. Subject to the provisions of this title, an employed person who is employed in the territory of one of the Contracting Parties shall be subject to the legislation of that Party, even if he is resident in the territory of the other Party or his employer or the principal place of business of the enterprise which employs him is in the territory of the other Party.

Article 8. The principle laid down in article 7 shall be subject to the following exceptions:

- (a) Where an employed person in the service of an enterprise having in the territory of one of the Contracting Parties an establishment where he is normally employed is sent to engage in employment for the enterprise in the territory of the other Contracting Party, such person shall remain subject to the legislation of the first-mentioned Party, as though he were still employed in its territory, for the first 24 months of his employment in the territory of the other Party. If the duration of such employment exceeds 24 months, the legislation of the first-mentioned Party shall continue to apply for a further period of not more than 12 months, provided that the competent authority of the other Party has given its consent before the end of the first 24-month period.
- (b) Travelling personnel in the service of an enterprise engaged, on its own account or on behalf of others, in the transport of passengers or goods by rail, road, air or water or in maritime fishing, with its principal place of business in the territory of one of the Contracting Parties, shall be subject to the legislation of that Party; however, persons employed in a branch or a permanent agency of the enterprise in the territory of the other Contracting Party shall be subject to the legislation of the Contracting Party in whose territory the branch or permanent agency is situated.

Article 9. 1. Subject to the provisions of article 3, paragraph 2, the provisions of article 7 shall apply to employed persons who are employed at the diplomatic or consular missions of the Contracting Parties or are in the personal employ of the officers of such missions.

2. However, an employed person as specified in paragraph 1 of this article who is a national of the Contracting Party represented by the diplomatic or consular mission in question may, within a period of three months after the start of his employment, elect to be subject to the legislation of the sending State.

Article 10. The competent authorities of the Contracting Parties may, by agreement, make exceptions to the provisions of articles 7 to 9 of this Convention for specific employed persons or groups of employed persons.

TITLE III. SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

Chapter I. SICKNESS AND MATERNITY

Article 11. For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an employed person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods completed under the legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

Article 12. 1. An employed person who has completed insurance periods under the legislation of one of the Contracting Parties and who moves to the territory of the other

Party shall be entitled, for himself and for members of his family as are in that territory, to the benefits provided for by the legislation of the latter Contracting Party, provided that:

- (a) He was fit for employment when he last entered the territory of the latter Contracting Party;
- (b) He has been subject to compulsory insurance since he last entered that territory;
- (c) He satisfies the conditions imposed by the legislation of the latter Contracting Party, account being taken, where applicable, of the aggregation of periods referred to in the preceding article.

2. Where, in the cases specified in the preceding paragraph, an employed person does not satisfy the conditions laid down in subparagraphs (a), (b), and (c) of that paragraph and where he would still be entitled to benefits under the legislation of the Contracting Party in whose territory he was last insured before his change of residence if he were in that territory, he shall remain entitled to benefits. The competent institution of that Party may request the institution of the place of residence to provide benefits in kind in accordance with the legislation applied by the latter institution.

Article 13. 1. An employed person who satisfies the conditions laid down by the legislation of one of the Contracting Parties for entitlement to benefits shall receive such benefits during a period of temporary abode in the territory of the other Contracting Party if his state of health necessitates immediate medical treatment, including admission to hospital.

2. An employed person who, after acquiring the right to benefits from an institution of one of the Contracting Parties, is authorized by that institution to transfer his residence to the territory of the other Contracting Party shall retain that right.

3. Where an employed person is entitled to benefits under the provisions of the preceding paragraphs, health benefits shall be provided, at the expense of the competent institution, by the institution of his place of abode or of his new residence in accordance with the legislation applied by that institution, particularly as regards the scale of such benefits and the manner of providing them; the duration of such benefits shall, however, be that prescribed by the legislation of the competent country.

4. In the cases specified in paragraphs 1 and 2 of this article, the provision of prosthesis, of large orthopaedic appliances and of other major health benefits shall be subject, except in cases of unmistakable urgency, to prior authorization by the competent institution.

5. In the cases specified in paragraphs 1 and 2 of this article, cash benefits shall be paid in accordance with the legislation of the competent country. Such benefits may be paid by an institution of the other country as agent for the competent institution according to rules to be laid down in an administrative agreement.

6. The provisions of the preceding paragraphs shall apply *mutatis mutandis* to family members during a period of temporary abode in the territory of the other Contracting Party or where they transfer their residence to the territory of the other Contracting Party after falling sick or becoming pregnant.

Article 14. 1. Members of the family of an employed person who is insured with an institution of one of the Contracting Parties shall, when resident in the territory of the other Contracting Party, be entitled to health benefits as though the employed person were insured with the institution of his place of residence. The scale and duration of such benefits and the manner of providing them shall be determined in accordance with the provisions of the legislation applied by the latter institution.

2. Where family members transfer their residence to the territory of the competent country, they shall be entitled to health benefits in accordance with the provisions of the

legislation of that country. This rule shall also apply where the family members have already received, in respect of the same case of sickness or the same pregnancy, benefits provided by the institutions of the Contracting Party in whose territory they were resident before the transfer; if the legislation applied by the competent institution prescribes a maximum duration for the provision of benefits, the period for which benefits were provided immediately before the transfer of residence shall be taken into account.

3. The provisions of this article shall not apply to family members as specified in paragraph 1 of this article who carry on an occupation in their country of residence or who receive a pension or annuity which entitles them to health benefits.

Article 15. Where the application of this chapter would entitle an employed person or a member of his family to maternity benefits under the legislation of both Contracting Parties, the applicable legislation shall be that in force in the territory of the Contracting Party in which the birth takes place, account being taken, in so far as necessary, of the insurance periods completed under the legislation of the other Contracting Party.

Article 16. 1. Where a person in receipt of pensions or annuities payable under the legislation of both Contracting Parties is resident in the territory of one of the Contracting Parties and is entitled to health benefits under the legislation of that Party, such benefits shall be provided for him and for members of his family by the institution of his place of residence as though he were in receipt of a pension or annuity payable solely under the legislation of his country of residence. The cost of such benefits shall be borne by the institution of the place of residence.

2. Where a person in receipt of a pension or annuity payable under the legislation of one of the Contracting Parties is resident in the territory of the other Contracting Party, any health benefits to which he may be entitled under the legislation of the first-mentioned Party shall be provided for him and for members of his family by the institution of his place of residence.

3. Where a person in receipt of a pension or annuity payable under the legislation of one of the Contracting Parties is entitled to health benefits under the legislation of the Contracting Party in whose territory he is resident he and members of his family shall receive such benefits during a period of temporary abode in the territory of the other Party if their state of health necessitates the immediate provision of benefits. The latter shall be provided by the institution of the place of abode in accordance with the provisions of the legislation applied by it. The provisions of article 13, paragraph 4, shall apply *mutatis mutandis*.

4. If the legislation of one Contracting Party provides, in order to cover the cost of health benefits, for contributory deductions from the amounts payable to a pensioner or annuitant, the institution which is liable for the pension or annuity and for the cost of health benefits shall be empowered to make the deductions referred to in this paragraph.

Article 17. 1. The cost of health benefits provided under article 12, paragraph 2, article 13, paragraphs 1, 2 and 6, article 14, paragraph 1, and article 16, paragraphs 2 and 3, of this Convention shall be reimbursed by the competent institutions to the institutions which provided the said benefits.

2. The amount due shall be determined and reimbursed according to rules to be laid down in an administrative agreement; the reimbursement may be made in lump-sums.

Chapter 2. INVALIDITY

Article 18. For the purposes of the acquisition, maintenance or recovery of the right to invalidity benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods completed under the

legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

Article 19. Cash invalidity benefits shall be awarded in accordance with the legislation applicable to the person concerned at the time when loss of working capacity, followed by invalidity, occurs and shall be payable by the institution competent under that legislation.

Article 20. Where the person concerned, account being taken of the aggregation of insurance periods referred to in article 18, does not satisfy the conditions for entitlement to cash invalidity benefits under the legislation applicable to him at the time of the loss of working capacity, followed by invalidity, but is still entitled to benefits under the legislation of the Contracting Party in whose territory he was insured immediately prior thereto or would be so entitled if he were present in that territory, he shall receive such benefits in the country to which he has moved. The said benefits shall be payable by the institution of the above-mentioned Contracting Party in accordance with the legislation applied by it.

Article 21. 1. Where the insured person, following suspension of invalidity benefits, recovers his entitlement, the benefits shall again be payable by the institution which was liable for payment of the benefits originally awarded if the invalidity is attributable to the sickness which gave rise to the award of benefits.

2. Where, following the discontinuance of invalidity benefits, the state of the insured person's health justifies the award of new invalidity benefits, the latter shall be determined in accordance with the rules laid down in articles 18–20.

Article 22. An employed person who is entitled to cash invalidity benefits payable by an institution of one of the Contracting Parties and who is resident in the territory of that Party shall retain such entitlement if he transfers his residence to the territory of the other Party. However, before effecting such transfer the employed person must obtain authorization from the competent institution. Authorization may be refused only if the transfer might affect the health of the person concerned or the provision of medical treatment.

Chapter 3. OLD AGE, DEATH AND SURVIVAL

Section 1. Special provisions relating to the application of Spanish legislation

Article 23. 1. For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods completed under the legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

2. Insurance periods completed by nationals of one of the Contracting Parties in third countries shall also be taken into consideration and aggregated with the insurance periods completed in the Netherlands for the purposes of entitlement and the calculation of old-age and survivors' benefits, provided that the Spanish State has agreed on similar provisions with the third countries in question.

3. Where Spanish legislation makes it a condition for the award of particular benefits that the insurance periods should be completed in an occupation which is subject to a special scheme, only the periods of employment completed in that occupation in the Netherlands or in a third country shall be aggregated for the purpose of qualification for such benefits, in the cases referred to in paragraph 2 of this article. If, despite the aggregation of such periods, the insured person does not satisfy the conditions for

entitlement to such benefits, the periods in question shall also be aggregated for the purpose of qualification for benefits under the Spanish general scheme.

Article 24. 1. The benefits to which an insured person as specified in article 23 of this Convention or his survivors may be entitled under Spanish legislation shall be determined in the following manner:

- (a) The Spanish institution shall determine in accordance with its own legislation, taking into account the aggregation of periods referred to in the preceding article, whether the person concerned satisfies the conditions for entitlement to the benefits provided for by that legislation;
- (b) Where the right to benefit is established in accordance with the preceding subparagraph, the said institution shall first calculate the amount of the benefit to which the person concerned would be entitled if all the insurance periods, aggregated in the manner specified in the preceding article, had been completed exclusively under its own legislation; on the basis of that amount, the institution shall determine the amount of benefit due according to the relation which the duration of the periods completed under that legislation, before the contingency materialized, bears to the total duration of the periods completed under the legislation of the Contracting Parties and, where applicable, of third countries before the contingency materialized; the latter amount shall represent the benefit payable to the person concerned by the Spanish institution.

2. Where the amount of the benefit to which, but for the application of the provisions of article 23, the person concerned might be entitled solely on the basis of the insurance periods completed under Spanish legislation is greater than the total benefits which accrue from the application of the preceding paragraph of this article, he shall be entitled to receive from the Spanish institution an additional amount equal to the difference.

Section 2. Special provisions relating to the application of Netherlands legislation

Article 25. Netherlands institutions shall calculate old-age pensions directly and exclusively on the basis of the insurance periods completed under Netherlands legislation.

Article 26. 1. For the purposes of calculating the old-age pension of a married employed person, account shall also be taken of those periods, preceding the date on which his spouse reached the age of 65, during which she resided in Spanish territory in the course of her marriage to him, provided that such periods coincide with the insurance periods completed by her husband under Netherlands legislation.

2. For the purposes of calculating the old-age pension of the widow of an employed person who has completed insurance periods under Netherlands legislation, those periods, preceding the date on which she reached the age of 65, during which she resided in Spanish territory in the course of her marriage to him shall be aggregated, provided that such periods coincide with the insurance periods completed by her husband under the said legislation.

3. Periods computable under paragraphs 1 and 2 above shall not be aggregated where they coincide with periods taken into account for the purposes of calculating the old-age pension payable under Spanish legislation or with periods during which the spouse or widow has received an old-age pension under that legislation.

Article 27. 1. The pensions provided by the transitional provisions of the Netherlands legislation concerning general old-age insurance for persons who had reached the age of 65 on 1 January 1957 shall be granted to Spanish nationals on the same conditions as to Netherlands nationals.

2. The advantages afforded by the transitional provisions of the Netherlands legislation concerning general old-age insurance to persons who were between 15 and 65 years of age on 1 January 1957 shall be granted to Spanish nationals on the same conditions as to Netherlands nationals.

Article 28. 1. Where an employed person to whom this Convention applies is at the time of his death insured under Spanish legislation and has completed insurance periods under Netherlands legislation concerning survivors' benefits, his widow shall be entitled to a pension under the last-mentioned legislation.

2. The amount of the pension referred to in the preceding paragraph shall be calculated on the basis of the relation which the actual duration of the decedent's individual insurance under Netherlands legislation concerning survivors' benefits bears to the maximum possible duration of insurance for the insured person in question under the said legislation.

Article 29. The advantages afforded by the transitional provisions of the Netherlands legislation concerning general widows' and orphans' insurance in cases where a death occurred before 1 October 1959 shall be granted to Spanish nationals on the same conditions as to Netherlands nationals.

Section 3. Death allowance

Article 30. 1. Where an employed person, pensioner or annuitant subject to the legislation of one Contracting Party dies in the territory of the other Party, the death shall be deemed to have occurred in the territory of the first-mentioned Party.

2. The competent institution shall be responsible for paying the death allowance, even if the beneficiary is present in the territory of the other Contracting Party.

Chapter 4. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 31. 1. An employed person insured under Spanish legislation who suffers an industrial accident or contracts an occupational disease in Netherlands territory or who, while entitled to benefits under Spanish legislation, transfers his residence to Netherlands territory shall be entitled to receive health benefits from the Netherlands institution of his place of abode or of his new residence at the expense of the competent Spanish institution.

2. Where an employed person is entitled to benefits under the provisions of the preceding paragraph, health benefits shall be provided to him by the Netherlands institution of his place of abode or of his new residence in accordance with the legislation applied by that institution, particularly as regards the scale of such benefits and the manner of providing them; the duration of such benefits shall, however, be that prescribed by Spanish legislation.

3. In the cases specified in this article, cash benefits shall be paid in accordance with the rules laid down in article 13, paragraph 5.

Article 32. In the case of transfers of residence as specified in paragraph 1 of the preceding article, an employed person who is entitled to benefits must, before effecting such transfer, obtain authorization from the institution liable for payment of the benefits. Such institution may not refuse authorization except where it is established by a medical report that the state of the employed person's health precludes the transfer of his residence to the territory of the other Contracting Party.

Article 33. 1. Health benefits provided in the cases referred to in article 31 shall be reimbursed by the competent institutions to the institutions which provided them.

2. Reimbursement shall be determined and effected in accordance with procedures to be established by the competent authorities in an administrative agreement, either against vouchers showing the actual costs or on a lump-sum basis.

Chapter 5. UNEMPLOYMENT

Article 34. For the purposes of the acquisition of the right to benefits, where an employed person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance or employment periods completed under the legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

Article 35. An employed person of one of the Contracting Parties who removes to the territory of the other Party shall be entitled, so long as he remains in that territory, to the unemployment benefits provided for by the legislation of the latter Party, provided that

- (a) He takes employment in accordance with the provisions of the legislation relating to the employment of alien workers;
- (b) He satisfies the conditions laid down by the legislation of the latter Party, account being taken of the aggregation of periods referred to in the preceding article.

Chapter 6. FAMILY ALLOWANCES

Article 36. Where Spanish legislation makes the acquisition of the right to family allowances conditional upon the completion of insurance periods, the competent Spanish institution shall take into account, to such extent as may be necessary, all insurance periods completed under Netherlands legislation.

Article 37. 1. An employed person insured under Spanish legislation who has family members residing or being educated in Netherlands territory shall be entitled, account being taken, where applicable, of the aggregation of periods referred to in the preceding article, to family allowances for them under Spanish legislation even if he is deemed to be resident in Netherlands territory.

2. An employed person insured under Netherlands legislation who has children residing or being educated in Spanish territory shall be entitled to family allowances for such children under Netherlands legislation even if he is deemed to be resident in Spanish territory.

3. Where the legislation of one of the Contracting Parties provides family allowances for persons in receipt of a pension or annuity, pensioners or annuitants who are deemed to be resident in the territory of the other Party shall likewise be entitled to such allowances.

4. Where, in the course of a particular period, family allowances are payable in respect of the same child under the legislation of both Contracting Parties, only the family allowance payable under the legislation of the Contracting Party in whose territory the child is residing or being educated shall be paid.

5. Family allowances to which a Spanish employed person whose children are resident in Spain is entitled under Netherlands legislation shall be paid directly to the person in charge of the children in Spain.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 38. The competent authorities

- (a) Shall conclude such administrative agreements as may be necessary for the application of this Convention;

- (b) Shall communicate to each other information regarding measures taken for the application of this Convention;
- (c) Shall communicate to each other information regarding any changes made in their legislation;
- (d) Shall determine by agreement between them the procedures for medical and administrative control.

Article 39. For the purposes of the application of this Convention, the authorities and institutions entrusted with its execution shall lend one another their good offices and shall act as though the matter were one affecting the application of their own legislation.

Article 40. 1. Any exemption from or reduction of charges, stamp duties, court fees or registration fees provided for by the legislation of one of the Contracting Parties in respect of papers or documents required to be produced for the purposes of the legislation of that Party shall be extended to similar papers and documents required to be produced for the purposes of the legislation of the other Contracting Party or of this Convention.

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

Article 41. 1. For the purposes of the application of this Convention, the institutions shall communicate directly with one another by correspondence in the French language.

2. The institutions and authorities of one of the Contracting Parties shall not reject claims or other documents addressed to them on the ground that they are drawn up in the official language of the other Contracting Party.

Article 42. Claims, declarations or appeals which, for the purposes of the legislation of one of the Contracting Parties, must be presented within a prescribed time-limit to an authority, institution or other agency of that Party shall be admissible if they are presented within the same time-limit to a corresponding authority, institution or other agency of the other Contracting Party. In such cases, the authority, institution or agency concerned shall transmit such claims, declarations or appeals without delay to the competent authority, institution or agency of the first-mentioned Party, either direct or through the liaison offices of the Contracting Parties.

Article 43. 1. The institutions of one Contracting Party which are liable under this Convention for the payment of cash benefits to beneficiaries who are in the territory of the other Contracting Party shall be held to discharge their liability validly by payment in the currency of the first-mentioned Party; moneys due from such institutions to institutions which are in the territory of the other Contracting Party must be paid in the currency of the latter Party.

2. Transfers of funds required for the application of this Convention shall be effected in accordance with the relevant agreements in force between the two Contracting Parties at the time of the transfer.

Article 44. Where a person is in receipt of benefits under the legislation of one Contracting Party owing to a contingency caused or occurring in the territory of the other Contracting Party, the rights of the institution liable for payment of the benefits *vis-à-vis* any third party liable for reparation of the damage shall be regulated in the following manner:

- (a) Where the institution liable for payment of the benefits is subrogated under the legislation applied by it to the rights of the recipient *vis-à-vis* a third party, the other Contracting Party shall recognize such subrogation;

(b) Where the institution liable for payment of the benefits possesses a right *vis-à-vis* a third party, the other Contracting Party shall recognize such right.

Article 45. 1. Any dispute between the Contracting Parties relating to the interpretation or application of this Convention shall be the subject of direct negotiations between the competent authorities of the Contracting Parties.

2. If the dispute cannot be resolved by that means within a period of six months from the opening of negotiations, it shall be submitted to an arbitral commission, whose composition and procedure shall be determined by agreement between the Contracting Parties.

The arbitral commission shall resolve the dispute in accordance with the fundamental principles and the spirit of this Convention. Its decisions shall be binding and final.

Article 46. 1. Where an institution of one Contracting Party has made an advance payment to a person entitled to benefits, such institution or, at its request, the competent institution of the other Party may deduct the amount of the advance from the payments to which such person is entitled.

2. Where a beneficiary has received public assistance from one Contracting Party during a period for which he is entitled to cash benefits, the institution liable for such benefits shall, at the request and for the account of the institution which granted the public assistance, withhold such benefits until the amount of the benefits paid to the beneficiary in the form of public assistance has been recovered.

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 47. 1. This Convention shall in no case confer any right to the payment of benefits for a period before the date of its entry into force.

2. Any insurance period completed under the legislation of one of the Contracting Parties before the entry into force of this Convention shall be taken into account for the purpose of determining the right to benefits in accordance with the provisions of this Convention.

3. Subject to the provisions of paragraph 1 of this article, a pension or annuity shall be payable under this Convention even in respect of an event which occurred before the date of its entry into force.

4. Any pension or annuity which has not been paid or which has been suspended by reason of the nationality of the person concerned or because he is resident in the territory of the other Contracting Party shall, upon his application, be paid or reinstated as from the date of the entry into force of this Convention, provided that the entitlement previously awarded has not been liquidated by a lump-sum payment.

5. Pensions or annuities determined before the entry into force of this Convention may, upon the application of the person concerned, be determined afresh, taking into account the provisions of this Convention.

6. With regard to the rights arising out of the application of paragraphs 4 and 5 above, the legislation of the Contracting Parties concerning the lapse and extinction of rights shall not apply to the beneficiary, provided that the application is submitted within two years of the date of the entry into force of this Convention. If the application is made after the expiry of that period, such right to benefits as has not lapsed or been extinguished shall be acquired as from the date of the application, unless the legislation of the Contracting Party concerned contains more favourable provisions.

Article 48. Each of the High Contracting Parties shall notify the other of its fulfilment of the necessary constitutional requirements for the application of this

Convention. The latter shall enter into force on the first day of the second month after the month in which the last such notification is received.

Article 49. As from the entry into force of this Convention, the provisions of the Convention between Spain and the Netherlands signed at Madrid on 17 December 1962 shall cease to have effect.

Article 50. This Convention is concluded for an indefinite period of time. It may be denounced by either of the Contracting Parties. Notice of denunciation must be given not later than six months before the end of the current year, in which case the Convention shall cease to have effect at the end of that year.

Article 51. 1. In the event of the denunciation of this Convention, any right acquired in accordance with its provisions shall be maintained.

2. Rights which are in process of acquisition in respect of insurance periods completed before the date on which the denunciation takes effect shall not be affected by the denunciation; the preservation of such rights in respect of the period after denunciation shall be determined by agreement or, in the absence of such agreement, by the national legislation of the institution concerned.

IN WITNESS WHEREOF the plenipotentiaries, being duly authorized for the purpose, have signed this Convention.

DONE at Madrid on 5 February 1974, in four copies, two in the Dutch and two in the Spanish language, both texts being equally authentic.

For the Kingdom of the Netherlands:

[Signed]

Baron E. J. LEWE VAN ADUARD

Ambassador of the Kingdom of the Netherlands

For the Spanish State:

[Signed]

PEDRO CORTINA MAURI

Minister for Foreign Affairs

FINAL PROTOCOL

On signing this day the Convention on social security between the Kingdom of the Netherlands and the Spanish State, the undersigned plenipotentiaries of the two Contracting Parties have duly noted their agreement on the following points:

1. For the purposes of the provision of health benefits at the expense of Netherlands institutions under articles 13 and 14 of the Convention, any person registered with a sickness fund as a compulsorily or voluntarily insured person shall be regarded as an employed person.

2. For the purposes of the provision of health benefits at the expense of Netherlands institutions under article 16, paragraph 3, of the Convention, any person registered with a sickness fund, whether for voluntary insurance or for voluntary insurance for the aged, shall likewise be regarded as the recipient of a pension or annuity with entitlement to health benefits.

DONE at Madrid on 5 February 1974, in four copies, two in the Dutch and two in the Spanish language, both texts being equally authentic.

For the Kingdom of the Netherlands:

[Signed]

Baron E. J. LEWE VAN ADUARD
Ambassador of the Kingdom of the Netherlands

For the Spanish State:

[Signed]

PEDRO CORTINA MAURI
Minister for Foreign Affairs

ADMINISTRATIVE AGREEMENT¹ FOR THE IMPLEMENTATION OF THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SPANISH STATE ON SOCIAL SECURITY²

Pursuant to article 38 of the Convention on social security between the Kingdom of the Netherlands and the Spanish State, signed at Madrid on 5 February 1974 (hereinafter referred to as "the Convention"), the competent authorities of the Netherlands and Spain have adopted by agreement the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1. For the purposes of the application of this Administrative Agreement, the terms defined in article I of the Convention shall have the same meaning as is assigned to them in that article.

Article 2. 1. For the purposes of the application of the Convention, the following are designated liaison offices with the general task of facilitating identification, the exchange of information and contacts between the competent institutions of the two Contracting Parties:

A. In Spain:

(a) The Instituto Nacional de Previsión in Madrid in the case of:

- Health and cash benefits in respect of temporary and transitory loss of working capacity, regardless of its cause;
- Health assistance to pensioners and recipients of other periodic benefits;
- Family welfare benefits;
- Unemployment;

(b) The Servicio de Mutualidades Laborales in Madrid in the case of:

- Old-age pensions;
- Pensions and other cash benefits in respect of permanent invalidity and survivors' benefits resulting from ordinary sickness, occupational disease or accident;
- Social assistance and social services.

This distribution of functions between the liaison offices shall extend to all schemes, both general and special, which make up the Spanish social security system.

B. In the Netherlands:

(a) The Ziekenfondsraad in Amstelveen in the case of health benefits in respect of sickness and maternity;

(b) The Sociale Verzekeringsbank in Amsterdam in the case of old-age and survivors' pensions and family allowances;

(c) The Gemeenschappelijk Administratiekantoor in Amsterdam in all other cases.

2. The competent authorities may designate other liaison offices, notifying each other of the decisions taken by them.

¹ Came into force on the same date as the Convention, in accordance with article 53.

² See p. 68 of this volume.

3. The liaison offices shall with the participation and co-operation of the competent institutions concerned and with the agreement of the competent authorities, establish by agreement between them the printed forms and other documentation necessary for the application of the Convention and of this Administrative Agreement. They may also agree on more detailed administrative measures for the implementation of this Agreement. Such measures shall be communicated to the competent authorities.

Article 3. The following shall be competent institutions within the meaning of article 1 (f) of the Convention:

A. In Spain:

- (a) The Instituto Nacional de Previsión in the case of the following benefits under the general scheme: health assistance in respect of maternity, ordinary sickness and non-industrial accidents; cash benefits in respect of temporary and transitory loss of working capacity resulting from ordinary sickness or non-industrial accidents; family benefits and unemployment benefits. It shall also be competent in the case of social assistance benefits and social services supplementary to the above-mentioned basic benefits;
- (b) The *Mutualidades Laborales* in the case of the following benefits under the general scheme: old-age, permanent invalidity, death and survivors', regardless of the cause; temporary and transitory loss of working capacity resulting from industrial accidents or occupational diseases. They shall also be competent in the case of social assistance benefits and social services supplementary to the above-mentioned basic benefits;
- (c) The *Mutualidad Nacional Agraria* in the case of benefits under the special agricultural scheme;
- (d) The Instituto Social de la Marina in the case of benefits under the special seamen's scheme;
- (e) The *Mutualidad Nacional de Empleados del Hogar* in the case of benefits under the special domestic service scheme;
- (f) The *Mutualidades Laborales del Carbón* in the case of benefits under the special coal-mining scheme;
- (g) The *Mutualidades Laborales de Trabajadores Autónomos* in the case of benefits under the special scheme for self-employed persons;
- (h) The *Mutualidad Nacional de Trabajadores Ferroviarios* in the case of benefits under the special railway workers' scheme;
- (i) The *Mutualidad Nacional de Artistas* in the case of benefits under the special scheme for professional artists;
- (j) The *Mutualidad Nacional de Representantes de Comercio* in the case of the special scheme for commercial travellers;
- (k) The *Mutualidad Nacional de Escritores de Libros* in the case of benefits under the special authors' scheme;
- (l) The *Mutualidad del Seguro Escolar* in the case of benefits under the special students' scheme;
- (m) The *Montepío de la Asociación Benéfica de Toreros* in the case of benefits under the special bullfighters' scheme;
- (n) The *Fondo Compensador* for the payment of pensions or annuities awarded by the competent institutions in respect of industrial accidents or occupational diseases.

B. In the Netherlands:

- (a) The *ziekenfondsen* in the case of health benefits;
- (b) The *bedrijfsverenigingen* in the case of cash benefits in respect of sickness, maternity, loss of working capacity and unemployment;
- (c) (i) The Social Verzekeringsbank, (ii) the *raden van arbeid* in the case of cash benefits in respect of old-age and cash benefits to survivors and in the case of family allowances.

Article 4. 1. For the purposes of the application of article 6 of the Convention, the competent institutions of the two countries shall, at the request of any one of them, provide the necessary information.

2. Where the concurrent payment of a benefit under Spanish legislation and a benefit under Netherlands legislation requires reimbursement of an overpayment, the competent institution liable for arrears shall defer payment thereof until the competent institution of the other country informs it of the amount to be withheld.

Article 5. 1. In the case referred to in article 8 (a) of the Convention, the institution specified below of the country whose legislation remains applicable shall provide the employed person, at his request, with a detached-service certificate attesting that he remains subject to the legislation of that country.

2. The said certificate shall be issued

- In Spain: by the Instituto Nacional de Previsión;
- In the Netherlands: by the Sociale Verzekeringsraad.

Article 6. An employed person who exercises the option provided for in article 9, paragraph 2, of the Convention shall so inform, through his employer, the institution specified in article 5, paragraph 2, of the country for whose legislation he has opted. The said institution shall duly notify the institution of the other country.

TITLE II. SPECIAL PROVISIONS

Chapter 1. SICKNESS AND MATERNITY BENEFITS

Article 7. For the purposes of the application of this chapter, “institution of the place of residence” and “institution of the place of abode” mean:

A. In Spain:

The provincial office of the Instituto Nacional de Previsión competent for the place of residence or abode;

B. In the Netherlands:

- In the case of health benefits: the *ziekenfonds* competent for the place of residence and the Algemeen Nederlands Onderling Ziekenfonds in Utrecht in the case of a temporary stay;
- In the case of cash benefits: the Nieuwe Algemene Bedrijfsvereniging in Amsterdam.

Article 8. 1. In order to benefit from the aggregation of insurance periods in the cases referred to in article 12, paragraph 1, of the Convention, an employed person must submit to the competent institution of the country to which he has moved certification of the periods competed under the legislation of the country where he was last employed before the date of his last entry into the first-mentioned country.

2. The certificate shall be issued, upon the request of the employed person:

- (a) As regards periods completed in the Netherlands, by the professional association (*bedrijfsvereniging*) to which his last employer in the Netherlands belonged. However,

if the employed person was insured exclusively for health benefits, the certificate shall be issued by the sick fund with which he was last insured;

(b) As regards periods completed in Spain, by the Instituto Nacional de Previsión.

If the employed person does not submit the certification, the competent institution shall request the above-mentioned institution of the other country to transmit it.

3. Where the employed person referred to in article 12, paragraph 1, of the Convention has been granted, for himself or for a member of his family, entitlement to prosthesis, major appliances or other major health benefits by the competent institution of the country where he was last insured before his entry into the other country, the cost of such benefits shall be borne by the said institution even if they are actually provided after his departure.

Article 9. In order to obtain health benefits, the employed person referred to in article 12, paragraph 2, of the Convention shall submit an application to the institution of his place of residence. The said institution shall request the competent institution to transmit certification of its recognition of the maintenance of the employed person's entitlement to benefits and of its assumption of the expenses resulting from the provision of such benefits, indicating in particular the maximum period during which they may be provided. If the employed person does not submit the said certification, the institution of the place of residence shall request the other institution to transmit it.

Article 10. 1. In order to obtain health benefits, including, where applicable, hospitalization, during a period of temporary abode in the country which is not the competent country, the employed person referred to in article 13, paragraph 1, of the Convention shall submit to the institution of the place of abode a certificate issued by the competent institution, if possible before the beginning of his period of temporary abode in the other country, attesting that he is entitled to the benefits and indicating the maximum period during which they may be provided. If the employed person does not submit the said form, the institution of the place of abode shall request the competent institution to transmit it.

2. The provisions of the preceding paragraph shall apply *mutatis mutandis* to family members during their period of temporary abode in the other country.

3. The provisions of paragraph 1 shall also apply in the cases provided for in article 8 (a) and (b), first clause, and article 9, paragraph 2, of the Convention. However, in the cases referred to in article 8 (a) of the Convention, the certificate provided for in article 5, paragraph 1, shall be submitted instead of the certificate referred to in paragraph 1 of this article.

Article 11. 1. In the event of hospitalization in the cases provided for in article 12, paragraph 2, and article 13, paragraphs 1, 2 and 6, of the Convention, the institution of the place of residence or abode shall notify the competent institution, within three days of the date on which it obtains such knowledge, of the date of admission to a hospital or other medical establishment, the probable duration of the hospitalization and the date of discharge.

2. In order to obtain the authorization to which provision of the benefits referred to in article 13, paragraph 4, of the Convention is subject, the institution of the place of residence or abode shall submit the appropriate application to the competent institution. Where it is necessary, in cases of unmistakable urgency, for the said benefits to be provided without authorization by the competent institution, the institution of the place of residence shall be so notified without delay. The competent liaison offices shall draw up the list of benefits to which the provisions of article 13, paragraph 4, of the Convention apply.

3. Cases of unmistakable urgency within the meaning of article 13, paragraph 4, of the Convention shall be those in which provision of the benefit cannot be deferred without seriously endangering the health or life of the person concerned. Where a prosthesis or appliance is accidentally broken or damaged, the need for its repair or replacement shall be deemed sufficient for the purpose of establishing unmistakable urgency.

Article 12. 1. In order to retain entitlement to health benefits in his new country of residence, the employed person referred to in article 13, paragraph 2, of the Convention must submit to the institution of his place of residence an authorization from the competent institution for retention of such entitlement after he has transferred his residence. The said institution shall indicate, where applicable, the maximum period during which the health benefits may be provided under the legislation which it applies. The competent institution may, after the employed person has transferred his residence and upon his request, issue the authorization if for valid reasons it could not previously be issued.

2. For the purposes of the provision of health benefits by the institution of the employed person's new place of residence, the provisions of article 11 shall apply *mutatis mutandis*.

Article 13. 1. In order to be able to receive health benefits in their country of residence, the family members referred to in article 14, paragraph 1, of the Convention must register with the institution of the place of residence after first submitting the following documentation:

- (a) Certification issued by the competent institution at the request of the employed person attesting to his entitlement to health benefits. Such certification shall remain valid until such time as the competent institution notifies the institution of the place of residence that it is no longer valid;
- (b) The documentation normally required under the legislation of the country of residence for the award of health benefits to family members.

2. The institution of the place of residence shall inform the competent institution which family members are entitled to health benefits under the legislation applied by the first-mentioned institution.

3. The provision of health benefits to family members shall be conditional upon the validity of the certification referred to in paragraph 1 of this article.

4. The employed person and members of his family shall be required to inform the institution of the latter's place of residence of any change in their status which might modify the entitlement of the family members to health benefits, in particular a termination or change of the employed person's employment or a change in his place of residence or abode or in that of a member of his family.

5. The institution of the place of residence shall lend its good offices to the competent institution where the latter is seeking to recover benefits to which the recipient is not entitled.

Article 14. In the case referred to in article 14, paragraph 2, of the Convention, the competent institution shall, where necessary, request the institution of the last place of residence of any family member who has transferred his residence to the competent country to provide it with information concerning the periods during which benefits were received immediately before the transfer.

Article 15. 1. In order to be able to receive health benefits in his country of residence, a person in receipt of a pension or annuity as specified in article 16, paragraph 2, of the Convention must register with the institution of his country of residence, at the same time submitting certification by the competent Spanish institution or the Zieken-

fondsraad, as applicable, that the person in receipt of the pension or annuity is entitled, together with the members of his family, to health benefits. The institution which issued the certification shall send a copy thereof to the liaison office of the other country.

2. The person in receipt of a pension or annuity shall be required to inform the institution of his place of residence of any change in his status which might modify his entitlement to health benefits, in particular any interruption or suspension of his receipt of the pension or annuity and any change in his place of residence or in that of the members of his family.

3. The institution which issued the certification shall inform the liaison office of the other country of the lapse of the entitlement to health benefits of the person in receipt of a pension or annuity.

Article 16. The provisions of articles 10 and 11 shall apply *mutatis mutandis* for the purposes of the provision of health benefits to persons in receipt of pensions or annuities and to the members of their families in the case of a period of temporary abode as specified in article 16, paragraph 3, of the Convention.

Article 17. 1. Where it has not been possible for the formalities in article 10 to be completed during the period of temporary abode, the expenses incurred shall be reimbursed, upon application by the employed person or the person in receipt of a pension or annuity, by the competent institution according to the rates applied by the institution of the place of abode.

2. The institution of the place of abode shall, at the request of the competent institution, provide the necessary information concerning the said rates.

Article 18. 1. For the purposes of the provision of cash benefits during a period of abode in the country which is not the competent country, an employed person shall submit an application to the institution of the place of abode in accordance with the rules applicable to employed persons insured with the said institution; in the case of a period of abode in the Netherlands, however, he shall submit his application directly to the institution without the intervention of his employer.

2. The institution of the place of abode shall promptly inform the competent institution of the receipt of the application, stating the date on which the employed person submitted it and the name and address of his employer.

3. Where, notwithstanding the provisions of paragraph 1, the employed person submits his application to the competent institution, the latter shall request the institution of the place of abode to conduct a check as though the application had been submitted in accordance with paragraph 1.

Article 19. 1. The institution of the place of abode shall conduct a medical and administrative check in accordance with the procedures applicable to persons insured with it.

2. The medical report shall state whether the employed person has suffered loss of working capacity and, if so, the date of the commencement of such loss, the diagnosis and the probable duration of the loss of working capacity.

3. The frequency of the medical check shall be such that the employed person is re-examined at the end of the period during which it appears from the most recent medical report that he will probably be unable to work.

Article 20. An employed person shall be subject to the rules for administrative checks of the institution of the place of abode.

Article 21. Where the institution of the place of abode finds that an employed person has committed an infraction of the rules governing checks, it shall immediately so inform the competent institution, indicating the nature of the infraction and the consequences normally entailed by such an infraction for persons insured with the institution of the place of abode.

Article 22. Where an employed person returns to the competent country, the institution of the place of abode shall so inform the competent institution, transmitting, at the same time, the opinion of the physician conducting the check as to whether or not the journey is injurious to the employed person's health.

Article 23. The competent institution shall pay cash benefits by suitable means, and, in particular, by international postal money order. However, the said benefits may be paid by the institution of the place of abode for the account of the competent institution where the latter gives its consent. In such cases, the competent institution shall inform the institution of the place of abode of the amount of the benefits and the date or dates on which they are to be paid as well as the maximum duration of the benefits.

Article 24. 1. The amount of the costs relating to the health benefits provided under the provisions of article 12, paragraph 2, article 13, paragraphs 1 and 2, and article 16, paragraph 3, of the Convention shall be reimbursed by the competent institutions to the institutions which paid the benefits, the said amount being determined from the latter institutions' accounts.

2. Rates higher than those applicable to health benefits provided to employed persons subject to the legislation applied by the institution which provided the benefits referred to in paragraph 1 of this article may not be taken into account for purposes of reimbursement.

3. The provisions of paragraph 1 of this article shall apply *mutatis mutandis* to the cash benefits provided for in the second sentence of article 23.

4. Notwithstanding the provisions of the preceding paragraphs, the liaison offices may, with the consent of the competent authorities, arrange for reimbursement of all or part of the benefits to be made through the payment of lump-sums instead of individual calculations of costs.

Article 25. 1. Costs relating to health benefits provided under the provisions of article 14, paragraph 1, of the Convention shall be calculated in lump-sums for each calendar year.

2. The amount of the lump-sum payable by Netherlands institutions shall be obtained by multiplying the average annual cost per family by the average annual number of families to be taken into account. The average annual cost per family shall be equal to the average cost per family of all health benefits provided by Spanish institutions to all families of insured persons subject to Spanish legislation.

3. The amount of the lump-sum payable by Spanish institutions shall be obtained by multiplying the average annual cost per family member by the average annual number of family members to be taken into account. The average annual cost per family member shall be equal to the average cost of all health benefits provided by Netherlands institutions to all insured persons subject to Netherlands legislation.

Article 26. 1. Costs relating to health benefits provided under the provisions of article 16, paragraph 2, of the Convention shall be calculated in lump-sums for each calendar year.

2. The amount of the lump-sum shall be obtained by multiplying the average annual cost per person in receipt of a pension or annuity and per member of such person's family

by the average annual number of such persons and of members of their families to be taken into account.

3. The average cost per person in receipt of a pension or annuity and per member of such person's family shall be equal, in the case of Spain, to the average cost, per person in receipt of a pension or annuity and per member of such person's family, of all health benefits provided by Spanish institutions to all persons in receipt of a pension or annuity (including the members of their families) subject to Spanish legislation.

4. The average cost per person in receipt of a pension or annuity and per member of such person's family shall be equal, in the case of the Netherlands, to the average cost, per person in receipt of a pension or annuity and per member of such person's family, of all health benefits provided by Netherlands institutions to all insured persons subject to Netherlands legislation.

5. In the application of paragraphs 2, 3 and 4 of this article, different calculations may be made according to the age group to which the persons in receipt of a pension or annuity belong.

Article 27. 1. The reimbursement provided for in article 17 of the Convention shall be effected through the liaison offices.

2. The offices referred to in the preceding paragraph may agree on a percentage increase for administrative costs in the amounts referred to in articles 25 and 26.

3. For the purposes of the application of articles 24–26, the said offices may conclude agreements for the payment of advances.

Chapter 2. INVALIDITY BENEFITS

Article 28. Applications for invalidity benefits in the case referred to in article 20 of the Convention must be submitted by the persons concerned to the institution of their place of residence, which shall forward them to the competent institution of the other country, attaching the following documentation and information:

- (a) A medical report on the cause and degree of invalidity and on possible measures to be taken for the recovery of working capacity;
- (b) Certification of the insurance periods completed by the applicant under the legislation of his country of residence;
- (c) Particulars as to the period during which health and cash benefits have been provided to the person concerned by reason of the sickness or accident which gave rise to the invalidity;
- (d) The date of receipt of the application.

Article 29. Where, pursuant to article 20 of the Convention, the person concerned applies for invalidity benefits, he shall not be entitled to such benefits until he has exhausted his entitlement to cash sickness benefits or, where applicable, to benefits in respect of temporary loss of working capacity provided in accordance with the legislation which was applicable at the time of the interruption of work.

Article 30. 1. Payment of benefits shall be made directly by the institution liable therefor, without regard to the beneficiary's place of residence. In the case of periodic benefits, payment may be made quarterly through a bank, by mail or in cash.

2. In cases where the system of indirect payment proves appropriate, such payment shall be effected through the institutions of the beneficiary's place of residence or through the liaison offices.

Article 31. 1. Administrative and medical checks in respect of persons in receipt of benefits under Spanish legislation who are resident in the Netherlands shall be conducted, at the request of the competent institution, through the Gemeenschappelijk Administratiekantoor.

2. Administrative and medical checks in respect of persons in receipt of benefits under Netherlands legislation who are resident in Spain shall be conducted, at the request of the competent institution, through the Servicio de Mutualidades Laborales.

3. However, every competent institution shall retain the right to have the beneficiary examined by a physician of its choice and to take measures designed to maintain, restore or improve the beneficiary's health and working capacity.

Article 32. Where, as a result of a check conducted pursuant to the preceding article, it is found that the recipient of an invalidity benefit was or is employed at the time when he was or is receiving the said benefit or that he has income exceeding the prescribed limit, a report of a qualified physician shall be sent to the competent institution. The said report shall indicate the nature of the employment exercised, the amount of the wages or income earned by the person in question during the previous quarter, the normal remuneration earned in the same area by an employed person in the occupational category to which the person in question belonged in the occupation which he exercised before being invalidated and, where applicable, a medical opinion on the state of the said person's health.

Article 33. The competent institution may, within the time-limit prescribed by its own legislation, directly request the beneficiary to furnish proof that he is living, a certificate of civil status and such documents as may be necessary for the retention of benefits.

Article 34. For the purposes of the application of this chapter, any institution other than that specified in article 1 (f) of the Convention which, under the applicable legislation, is responsible for providing rehabilitative therapy, medical treatment and equivalent services and for establishing loss of working capacity shall be placed on the same footing as the competent institution.

Chapter 3. OLD-AGE, DEATH AND SURVIVORS' BENEFITS SUBMISSION AND PROCESSING OF APPLICATIONS

Article 35. 1. An employed person or a survivor of an employed person resident in Spain or in the Netherlands who applies for a pension pursuant to the legislation of the other country shall address his application to the institution of the country in which he is resident.

2. Where the person concerned is resident in the territory of a third State, he shall address his application to the competent institution of the country under whose legislation the employed person was last insured.

3. Save where an exception to the rule is justified, applications must be submitted on the standard forms prescribed by the legislation of the country in which the application is required to be submitted under paragraph 1 or 2 of this article.

4. The applicant shall indicate, where possible, the institution or institutions of the two countries with which the employed person has been insured. He shall provide such information as the competent institution may request on the special standard forms prescribed for the purpose.

5. Where an institution other than that specified in paragraph 1 or 2 of this article receives an application, it shall forward such application without delay to the institution specified in paragraph 1 or 2 of this article, indicating the date on which the application

was submitted. The said date shall be regarded as the date of submission of the application to the last-mentioned institution.

Article 36. 1. For the purpose of processing applications for old-age or survivors' benefits, the competent institutions of the two countries shall use a standard liaison form. The said form shall contain, in particular, a record and total figure for the insurance periods completed by the insured person under the bodies of legislation to which he has been subject.

2. The forwarding of the above-mentioned form to the competent institution of the other country shall be deemed to be a sufficient substitute for the transmittal of supporting documents.

Article 37. 1. The competent institution of the country of residence shall complete the form provided for in article 36 and shall forthwith transmit two copies thereof to the competent institution of the other country.

2. Where a possibility of delay exists, the competent institution of the country of residence shall pay the person concerned a recoverable advance whose amount shall approximate as nearly as possible the amount likely to be fixed pursuant to the provisions of the Convention.

Article 38. 1. Upon receiving the form, the competent institution of the other country shall complete it, providing the following particulars:

- (a) The insurance periods completed by the insured person under the said institution's national legislation;
- (b) The amount of the benefits for which the said institution is liable.

2. The institution in question shall thereupon return to the competent institution of the country of residence a copy of the form, completed in the manner indicated in paragraph 1 and accompanied by two copies of the final decision, which shall specify the legal remedies and time-limits therefor provided for by the legislation of the first-mentioned institution.

Article 39. 1. The competent institution of the country of residence shall, after taking its own decision, notify the applicant of the decisions taken by means of a summary statement drawn up in the applicant's language and accompanied by the said decisions. The statement shall also indicate the legal remedies and time-limits therefor provided for by the legislation of the two countries. The said time-limits shall not begin to run until the statement is received by the applicant.

2. The competent institution of the country of residence shall thereupon inform the competent institution of the other country of the date on which the applicant was notified of the two decisions, at the same time transmitting a copy of its own decision and of the summary statement.

Article 40. For the purpose of calculating a widow's pension under Netherlands legislation, the maximum possible duration referred to in article 28, paragraph 2, of the Convention shall run from the date on which the insured person reached the age of 15 years.

PAYMENT OF BENEFITS

Article 41. 1. Benefits payable by the institutions shall be paid directly and on the due dates prescribed by the applicable legislation, without regard to the beneficiary's place of residence.

2. Benefits shall be paid without the deduction of postal or banking costs.

Article 42. The competent institutions of the two countries may directly request beneficiaries to furnish proof that they are living, certificates of civil status and such other documents as may be necessary for the retention of benefits.

Chapter 4. BENEFITS IN RESPECT OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES (APPLICATION OF SPANISH LEGISLATION)

Article 43. 1. Cash benefits payable to beneficiaries present in the Netherlands shall be paid directly by the institution liable therefor within the time-limits provided for by its legislation.

2. The provisions of this Agreement relating to health benefits in respect of sickness shall apply *mutatis mutandis* to health benefits in respect of industrial accidents or occupational diseases.

Chapter 5. UNEMPLOYMENT

Article 44. 1. In order to benefit from the provisions of article 34 of the Convention, an employed person must submit to the competent institution certification of the insurance or employment periods completed under the legislation to which he was previously subject.

2. At the request of the person concerned, the said certification shall be issued:

- (a) As regards periods completed in the Netherlands, by the professional association to which his last employer in the Netherlands belongs;
- (b) As regards periods completed in Spain, by the provincial office of the Instituto Nacional de Previsión with which the employed person was last insured.

3. If the person concerned does not submit the certification, the competent institution shall request the above-mentioned institution to transmit it.

Chapter 6. FAMILY ALLOWANCES

Article 45. 1. In order to benefit from the provisions of article 36 of the Convention, the person concerned must submit to the Spanish competent institution certification of the insurance periods completed under Netherlands legislation.

2. The said certification shall be issued, at the request of the person concerned, by the *raad van arbeid* which was last competent. If the said person does not submit the certification, the Spanish competent institution shall request the above-mentioned institution to transmit it.

Article 46. For the purposes of the application of article 37, paragraph 5, of the Convention, a Spanish employed person must indicate in the application for Netherlands family allowances the given name, surnames and address of the person who is to receive the family allowances in Spain.

Article 47. Family allowances shall be paid directly and on the due dates prescribed by the applicable legislation. They shall be paid without the deduction of postal or banking costs.

TITLE III. MISCELLANEOUS PROVISIONS

Article 48. 1. For the purposes of aggregation of insurance periods completed under the legislation of the two countries as provided for in the Convention, the competent institutions shall apply the following rules:

- (a) Where a period of compulsory insurance completed under the legislation of one country coincides with a period of voluntary or optional insurance completed under the legislation of the other country, the latter period shall not be aggregated;
- (b) Where an insurance period which is completed under the legislation of one country and is not an assimilated period coincides with an assimilated period under the legislation of the other country, only the former period shall be taken into account;
- (c) Where two assimilated periods, one completed in one country and the other in the other country, coincide, account shall be taken of only the period completed in the country under whose legislation the person in question last completed an insurance period before the assimilated period. Where the said person did not previously complete an insurance period in either country, account shall be taken of only the assimilated period completed under the legislation of the country in which, subsequent to the assimilated period, he first completed an insurance period;
- (d) Where the time span during which certain insurance periods were completed under the legislation of one country cannot be precisely determined, the competent institutions may permit such periods to be taken into account if it is duly established, by other means, that employment which would give rise to insurance periods was exercised.

2. Where, pursuant to paragraph 1 (a) of this article, insurance periods completed under voluntary or voluntarily continued insurance in accordance with the legislation of one country concerning old-age, death or survivors' insurance are not taken into account, the premiums corresponding to the said periods shall be deemed to be earmarked for the purpose of augmenting the benefits payable under the said legislation.

Article 49. The competent institutions of the two countries may, at any time, request one another to establish or verify facts and actions which may, under their own legislation, entail the modification, suspension or discontinuance of entitlement to benefits recognized by them.

Article 50. Where, following the suspension of a benefit, the person concerned recovers his entitlement to benefits while resident in the other country, the institutions concerned shall exchange such information as they deem necessary for the resumption of payment of the benefit.

Article 51. Costs connected with administrative checks, medical examinations, observation periods, travel and verification of any kind required for the award, provision or revision of benefits shall be reimbursed to the institution which provided the benefits on the basis of the rate applied by it, by the institution for whose account the benefits were provided.

Article 52. For the purposes of the application of article 42 of the Convention, an authority, institution or agency receiving a claim, declaration or appeal which should have been presented to an authority, institution or agency of the other country shall indicate the date on which such claim, declaration or appeal was received.

Article 53. This Agreement shall enter into force on the same date as the Convention and shall have the same duration; as from this date, the Administrative Agreement of 16 April 1964 for the implementation of the Convention on social security of 17 December 1962 between Spain and the Kingdom of the Netherlands shall cease to have effect.

DONE at Madrid on 5 February 1974, in four copies, two in the Spanish and two in the Dutch language, both texts being equally authentic.

For the competent Netherlands authority:

[Signed]

Baron E. J. LEWE VAN ADUARD
Ambassador of the Kingdom of the Netherlands

For the competent Spanish authority:

[Signed]

PEDRO CORTINA MAURI
Minister for Foreign Affairs

PROTOCOL

On signing this day the Administrative Agreement for the implementation of the Convention on social security between Spain and the Kingdom of the Netherlands, the competent authorities of the two countries:

Having studied the situation of Spanish employed persons and members of their families who are not covered by the legislation referred to in article 2 (B) (a) of the Convention and are nevertheless, by reason of their legal status as civil servants, entitled to reimbursement of health costs;

Desiring to arrive at a satisfactory solution in this regard;

Have duly noted their agreement on the following:

The Spanish liaison office competent in respect of health benefits shall, at the request of the Netherlands liaison office competent in respect of health benefits, apply *mutatis mutandis*, to the above-mentioned groups of employed persons and the members of their families as designated by the Netherlands liaison office, the rules on health benefits set out in the Administrative Agreement.

The liaison offices may, by agreement between them, make further arrangements for the application of the preceding paragraph.

DONE at Madrid on 5 February 1974, in four copies, two in the Spanish and two in the Dutch language, both texts being equally authentic.

For the competent Netherlands authority:

[Signed]

Baron E. J. LEWE VAN ADUARD
Ambassador of the Kingdom of the Netherlands

For the competent Spanish authority:

[Signed]

PEDRO CORTINA MAURI
Minister for Foreign Affairs
