

No. 27306

**PORTUGAL
and
AUSTRIA**

**Convention in the field of social security (with final protocol).
Signed at Vienna on 18 April 1985**

Authentic texts: Portuguese and German.

Registered by Portugal on 25 May 1990.

**PORTUGAL
et
AUTRICHE**

**Convention en matière de sécurité sociale (avec protocole
final). Signée à Vienne le 18 avril 1985**

Textes authentiques : portugais et allemand.

Enregistrée par le Portugal le 25 mai 1990.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE PORTUGUESE REPUBLIC AND
THE REPUBLIC OF AUSTRIA IN THE FIELD OF SOCIAL
SECURITY

The Portuguese Republic and the Republic of Austria,

Desiring to promote and expand relations between the two Contracting States in the field of social security,

Have agreed to conclude the following Convention, taking into consideration the principles of the European Convention on Social Security signed at Paris on 14 December 1972:²

TITLE I. GENERAL PROVISIONS

Article 1

(1) For the purposes of this Convention:

1. “Austria” means the Republic of Austria; “Portugal” means the Portuguese Republic.

2. The “European Convention on Social Security” means the European Convention on Social Security signed at Paris on 14 December 1972 in the version which is in force between the two Contracting States.

3. “Legislation” means the laws, regulations and statutory provisions relating to the branches of social security specified in article 2, paragraph 1.

4. “Competent authority” means, in the case of Austria, the Federal Ministers responsible for the application of the legislation referred to in article 2, paragraph 1, of this Convention; in the case of Portugal, the Ministers or other authorities responsible for the application of the legislation referred to in article 2, paragraph 1, of this Convention.

5. “Institution” means the agency or the authority responsible for the application of the legislation, or any part thereof, specified in article 2, paragraph 1.

6. “Competent institution” means the institution with which the person concerned is insured at the time of application for benefits or from which he has an entitlement to benefits or would have an entitlement to benefits if he were resident in the territory of the Contracting Party in which he had most recently been insured.

7. “Dependant” means a dependant as defined in the legislation of the Contracting State in which the institution liable for the benefits has its main office.

¹ Came into force on 1 May 1987, i.e., the first day of the third month following the month of the exchange of the instruments of ratification or approval, which took place at Lisbon on 24 February 1987, in accordance with article 22 (2).

² United Nations, *Treaty Series*, vol. 1710, No. I-29575.

8. “Family allowances” means, in the case of Austria, the family allowance; in the case of Portugal, the family allowance, the supplementary allowance for handicapped children and the monthly assistance paid for life.

(2) Other terms used in this Convention shall have the meanings assigned to them in the European Convention on Social Security or in the applicable domestic legislation.

Article 2

(1) This Convention shall apply:

1. In Austria, to the legislation concerning:

(a) Sickness and maternity benefits;

(b) Unemployment assistance;

(c) Family allowances;

2. And in Portugal, to the legislation concerning:

(a) Sickness and maternity benefits;

(b) Unemployment benefits;

(c) Family allowances, supplementary allowances for handicapped children and the monthly assistance paid for life.

(2) This Convention shall also apply to any legislation which codifies, amends or supplements the legislation specified in paragraph 1.

(3) Legislation arising from agreements with third States or from supranational law shall not be taken into consideration in the application of this Convention.

Article 3

This Convention shall apply to persons covered by article 4 of the European Convention on Social Security.

TITLE II. PROVISIONS TO DETERMINE WHICH LEGISLATION IS APPLICABLE

Article 4

For the purposes of determining which legislation is applicable, articles 14 to 18 of the European Convention on Social Security shall apply.

TITLE III. SPECIAL PROVISIONS

Chapter 1. SICKNESS AND MATERNITY BENEFITS

Article 5

For the purposes of adding together periods of insurance or residence, article 19 of the European Convention on Social Security shall apply.

Article 6

(1) A person who is entitled to benefits in kind under the legislation of one of the Contracting Parties shall receive benefits in kind, at the expense of the competent institution, during his stay in the territory of the other Contracting Party under the legislation applicable to that institution; where the stay is of a temporary nature, the foregoing shall apply only if his condition is such that the benefits must be provided immediately.

(2) In the case specified in paragraph 1, the provision of prostheses, large appliances and other major benefits in kind shall be subject to the authorization of the competent institution, unless provision of the benefit cannot be postponed without seriously endangering the life or health of the person concerned.

(3) In the case specified in paragraph (1), cash benefits shall be paid by the competent institution in accordance with the legislation applicable to that institution.

(4) The foregoing paragraphs shall be applicable *mutatis mutandis* to the dependants of persons covered by paragraph (1).

Article 7

Cash benefits for sickness and maternity, granted under the legislation of a Contracting State to a person covered by article 4 of the European Convention on Social Security, shall also be payable where the person entitled to such benefits is temporarily or habitually resident in the territory of the other Contracting State.

Article 8

(1) In the case of persons in receipt of pensions from the pension insurance schemes of the Contracting States, the applicable legislation shall be that governing the sickness insurance of pensioners of the Contracting State in whose territory they habitually reside.

Where a pension is provided solely under the legislation of the other Contracting State, it shall be deemed to be a pension from the first-mentioned Contracting State.

(2) Paragraph 1 shall apply *mutatis mutandis* to persons applying for a pension.

Article 9

In the cases specified in article 6 and article 8, paragraph 1, second sentence, benefits shall be provided:

In Austria, by the Regional Sickness Fund competent for the place of stay of the person concerned;

In Portugal, by the State Health Service.

Article 10

(1) The competent institution shall reimburse to the institution of the place of stay the amounts expended under articles 6 and 8, paragraph 1, second sentence, with the exception of administrative costs.

(2) In the interests of administrative simplification, the competent authorities may, at the request of the institutions concerned, agree, for all cases or for specific categories of cases, that lump-sum payments may be made in lieu of individual settlements.

Chapter 2. UNEMPLOYMENT BENEFITS

Article 11

(1) For the purposes of adding together periods of insurance, employment, occupational activity or residence, article 51 of the European Convention on Social Security shall apply.

(2) Article 52 of the European Convention on Social Security shall apply, provided that:

(a) The unemployed worker transfers his residence to his country of origin;

(b) The provisions of article 54 of the European Convention on Social Security are applied; and

(c) The period during which benefits are provided by the institution of the country of origin at the expense of the institution of the other Contracting State does not exceed 120 days; if the institution of the country of employment has already paid unemployment assistance to the unemployed person for a certain number of days before that person was granted unemployment assistance in the other Contracting State, the reimbursement entitlement shall be reduced by an equal number of days.

(3) If an institution of a Contracting State has provided benefits to a person to which he is not entitled, the competent institution of the other Contracting State may, at the request and to the credit of the first-mentioned institution withhold from a retrospective payment or from current payments of unemployment assistance to the person entitled to such assistance, the amounts paid without entitlement, as provided for in the applicable domestic legislation.

Chapter 3. FAMILY ALLOWANCE

Article 12

For the purposes of adding together periods of employment, occupational activity or residence, article 57 of the European Convention on Social Security shall apply.

Article 13

(1) A person who is employed in one of the Contracting States shall be entitled under the legislation of that State to a family allowance also for such children as are resident in the other Contracting State.

(2) As regards entitlement to a family allowance, employed persons shall be treated as if they were resident solely in the Contracting State in which they work.

Article 14

The amount of family allowance provided under Austrian legislation for children who are permanently resident in Portugal shall be 682 schillings per month per

child. After 1 January 1982, this amount shall be increased or reduced by the same percentage as that whereby the family allowance for one child is increased or reduced in Austria. The age supplement to the family allowance shall not be affected.

Article 15

Employed persons drawing cash benefits under the legislation on sickness insurance or unemployment insurance of one of the Contracting States shall be treated, for the purpose of entitlement to a family allowance, as if they worked in the Contracting State under whose legislation they receive these benefits.

Article 16

Where a person, during a calendar month, has met the conditions for entitlement in respect of a child in accordance with the legislation of both Contracting States, account having been taken of the provisions of this Convention, the family allowance for that month shall be provided only by that Contracting State under whose legislation the benefit was due at the beginning of the month.

Article 17

Where, in accordance with the legislation of both Contracting States, account having been taken of the provisions of this Convention, the conditions for the provision of a family allowance for a child have been met in the territory of both Contracting States, the family allowance for that child shall be provided solely under the legislation of the Contracting State in which the child is permanently resident.

Article 18

For the purposes of this chapter, children shall mean persons for whom family allowances are provided in accordance with the applicable legislation.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 19

The competent authorities may prescribe in an agreement the administrative measures necessary for the implementation of this Convention. Such agreement may be concluded before the entry into force of this Convention; it may not, however, enter into force earlier than the Convention itself.

Article 20

(1) For the purposes of implementing this Convention, Title IV of the European Convention on Social Security shall apply *mutatis mutandis*.

(2) Article 67, paragraph 1, article 69, paragraph 2, and article 70, paragraph 1, of the European Convention on Social Security shall apply to relations between the Contracting States concerning the application of the European Convention on Social Security and of this Convention.

(3) Article 69, paragraph 2, of the European Convention on Social Security shall apply, *mutatis mutandis*, to family allowances drawn without entitlement.

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 21

(1) Under this Convention, benefits shall be granted also in respect of events which occurred prior to its entry into force.

(2) Paragraph 1 of this Article shall not confer any entitlement to benefits in respect of periods prior to the entry into force of this Convention.

Article 22

(1) This Convention shall be ratified or approved. The instruments of ratification or approval shall be exchanged as soon as possible at Lisbon.

(2) This Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification or approval are exchanged.

(3) This Convention is concluded for an indefinite period. Either Contracting State may denounce it by giving three months' notice in writing through the diplomatic channel.

(4) This Convention shall in any event cease to have effect on the date on which either Contracting State denounces the European Convention on Social Security.

(5) In the event that this Convention ceases to have effect, its provisions shall continue to apply to acquired entitlements, irrespective of any restrictive provisions laid down by the schemes concerned to cover cases where an insured person is resident abroad.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States have signed this Convention.

DONE at Vienna on 18 April 1985, in two originals in the Portuguese and German languages, both texts being equally authentic.

For the Portuguese Republic:
[Dr. JAIME GAMA]

For the Republic of Austria:
[LEOPOLD GRATZ]

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE PORTUGUESE
REPUBLIC AND THE REPUBLIC OF AUSTRIA IN THE FIELD OF
SOCIAL SECURITY

At the time of signing the Convention on Social Security concluded today between the Portuguese Republic and the Republic of Austria, the plenipotentiaries of the two Contracting States declared that agreement has been reached on the following provisions:

I. In relation to article 6 of the Convention:

This shall apply in Austria, provided it is a matter of temporary stay, in respect of treatment by physicians, dental surgeons and dentists who are engaged in the free pursuit of their profession, only to the following persons:

(a) Persons who are in Austria in the exercise of their occupation and their dependants accompanying;

(b) Persons who are staying temporarily in the territory of Austria in order to visit their dependants who are resident in that territory;

(c) Persons who are in Austria for other reasons, if they have been given out-patient treatment at the expense of the Regional Sickness Fund competent for their place of stay.

II. In relation to article 10 of the Convention:

In the cases specified in article 8, paragraph 1, second sentence, the reimbursement of expenses for beneficiaries of the Austrian pension insurance scheme shall be made from the Pensioners' Sickness Insurance contributions deposited with the Central Federation of Austrian Social Insurance Authorities (Hauptverband der österreichischen Sozialversicherungsträger).

III. In relation to articles 13 and 14 of the Convention:

1. Entitlement to a family allowance shall exist only where the employment engaged in does not infringe the legislation in force on the employment of foreigners.

2. Entitlement to a family allowance under Austrian law shall exist only where the employment or habitual residence in Austria lasts for at least one calendar month; the aggregation of periods provided for in article 12 shall not apply to this period.

3. Entitlement to the higher family allowance granted under Austrian law for severely handicapped children shall be recognized only in respect of children who are permanently resident in Austria.

This Final Protocol shall constitute an integral part of the Convention between the Portuguese Republic and the Republic of Austria in the field of social security. It shall enter into force on the same date as the Convention and shall remain in force so long as the Convention is in force.

IN WITNESS WHEREOF the plenipotentiaries have signed this Final Protocol.

DONE at Vienna on 18 April 1985, in two originals in the Portuguese and German languages, both texts being equally authentic.

For the Portuguese Republic:

[Dr. JAIME GAMA]

For the Republic of Austria:

[LEOPOLD GRATZ]