

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 213

A. TITEL

*Verdrag inzake sociale zekerheid tussen het Koninkrijk der
Nederlanden en de Republiek India;
(met Administratief Akkoord)
New Delhi, 22 oktober 2009*

B. TEKST

**Agreement on Social Security between the Kingdom of the
Netherlands and the Republic of India**

The Kingdom of the Netherlands

and

The Republic of India

(hereinafter referred to as “the Contracting States”),

Being desirous of regulating the relationship between the two countries in the field of social security; and

Wishing to establish the Agreement on the basis of reciprocity;

prevent double coverage and to avoid non-coverage under the social security systems of both countries for persons moving between or working in their respective territories;

provide for portability of social security benefits;

guarantee equality of treatment of nationals of one Contracting State to nationals of the other Contracting State under the respective laws of both countries; and

regulate the co-operation between the two Contracting States to ensure the enforcement of one country’s legislation in the other,

Have agreed as follows:

PART 1

GENERAL PROVISIONS

Article 1

Definitions

1. For the purpose of this Agreement, the following definitions apply,
 - a) “India” means the Republic of India, and
“the Netherlands” means the Kingdom of the Netherlands;
 - b) “Territory” means,
 - (i) in relation to India, the territory of the Republic of India, and
 - (ii) in relation to the Netherlands, the territory of the Kingdom of the Netherlands in Europe;
 - c) “National” means,
 - (i) in relation to India, a person of Indian nationality, and
 - (ii) in relation to the Netherlands, a person of the Netherlands’ nationality;
 - d) “Competent authority” means,
 - (i) in relation to India, the Minister of Overseas Indian Affairs, and
 - (ii) in relation to the Netherlands, the Minister of Social Affairs and Employment;
 - e) “Competent institution” means,
 - (i) in relation to India, the institution charged with the implementation of the legislation specified in Article 2, paragraph 1 a), and
 - (ii) in relation to the Netherlands, the institution charged with the implementation of the legislation specified in Article 2, paragraph 1 b);
 - f) “Legislation” means the laws and regulations specified in Article 2;
 - g) “Employee” means a person who is employed by an employer as well as any person who is deemed equivalent to an employed person by the applicable legislation;
 - h) “Benefit” means any pension or benefit in cash, including any supplements or increases applicable under the legislation specified in Article 2;
 - i) “Member of the family” means any person defined or recognized as such by the applicable legislation;
 - j) “Residence” means residence defined or recognised as such by the applicable legislation.
2. Any term not defined in paragraph 1 of this Article shall have the meaning assigned to it in the applicable legislation.

Article 2

Material Scope

This Agreement shall apply,

- a) as regards India, to all legislations concerning:
 - (i) old age and survivors' pension for employed persons;
 - (ii) the permanent total disability pension for employed persons; and, as regards Part II only, to the legislation concerning:
 - (iii) the social security for employed persons.and
- b) as regards the Netherlands, to the legislation on social insurance concerning:
 - (i) old age;
 - (ii) disablement;
 - (iii) survivors; and as regards to Part II, in addition to the legislation on social insurance concerning:
 - (iv) sickness (including the scheme concerning the liability of the employer and benefit in kind);
 - (v) maternity;
 - (vi) unemployment;
 - (vii) children's allowances.

Article 3

Personal Scope

Unless otherwise specified, this Agreement shall apply to all persons who are or have been subject to the legislation of either of the Contracting States, and other persons who derive rights from such persons.

Article 4

Equal Treatment

Unless otherwise provided in this Agreement, the persons specified in Article 3, who ordinarily reside in the territory of a Contracting State, shall receive equal treatment with nationals of that Contracting State in the application of the legislation of that Contracting State.

Article 5

Payments of Benefits Abroad

1. Unless otherwise provided in this Agreement, a Contracting State shall not reduce or modify benefits acquired under its legislation solely on the ground that the beneficiary stays or resides in the territory of the other Contracting State.

2. Paragraph 1 does not apply to the Netherlands' legislation concerning the Supplementary Benefits Act of 6th November, 1986, and the Disablement Assistance Act for Handicapped Young Persons of 24 April, 1997.

3. Benefits payable under the legislation of a Contracting State shall be payable to nationals of the other Contracting State, residing or staying in the territory of a third State, on the same conditions and to the same extent as to nationals of the first Contracting State who reside or stay in the territory of a third State.

PART II

DETERMINATION OF THE APPLICABLE LEGISLATION

Article 6

General Provisions

Unless otherwise provided in this Agreement:

a) a person who works as an employee or a self-employed person in the territory of a Contracting State shall, with respect to that employment or self-employment, be subject only to the legislation of that Contracting State;

b) a person, not being a seafarer, who is a member of the travelling or flying personnel of an enterprise which, for hire or reward or on its own account, operates international transport services for passengers or goods and has a registered office in the territory of a Contracting State shall be subject to the legislation of that Contracting State;

c) as regards seafarers, cases of double coverage or non-coverage shall be resolved through consultations between the competent authorities of the Contracting States.

Article 7

Special Provisions

1. An employed person who, being in the service of an employer with an office on which he normally depends in the territory of one of the Contracting States and paying contributions under the legislation of that Contracting State, is posted by that employer in the territory of the other Contracting State to work on its account, shall remain subject to the legislation of the former Contracting State and continue to pay contributions under the legislation of this Contracting State, as if he continued to be employed in his territory on the condition that the foreseeable duration of his work does not exceed 60 months. The family members who accompany the employed person will be subject to the legislation of that former Contracting State unless they exercise professional activities.

2. If the detachment referred to in paragraph 1 of this Article continues beyond 60 months, the competent authorities of the two Contracting States or the competent institutions designated by those competent authorities may agree that the employee remains subject only to the legislation of the first Contracting State.

3. Paragraph 1 of this Article shall apply where a person who has been sent by his employer from the territory of one Contracting State to the territory of a third country and who remains subject to the legislation of first Contracting State, is subsequently sent by that employer from the territory of the third country to the territory of the other Contracting State.

Article 8

Civil Servants, Members of Diplomatic Missions and Consular Posts

1. Civil servants and equivalent personnel of a Contracting State, who are sent to the territory of the other Contracting State, shall be subject to the legislation of the Contracting State whose administration employs them.

2. If under paragraph 1 a person continues to be subject to the legislation of the Contracting State from whose territory he has been sent, that paragraph shall also apply by analogy to the person's family members who accompany him, unless they exercise professional activities.

3. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961 or the Vienna Convention on Consular Relations of April 24, 1963.

Article 9

Modification Provision

The competent authorities or the competent institutions designated by the competent authorities of the two Contracting States may agree to grant an exception on the application of Articles 6 to 8, in respect of particular persons or categories of persons, provided that the affected persons shall be subject to the legislation of one of the Contracting States.

Article 10

Residence

A person who is subject to the legislation of one Contracting State in accordance with the provisions of this Part shall be considered as residing in the territory of that Contracting State.

PART III

ENFORCEMENT

Article 11

Identification

1. In order to determine entitlement to benefit and legitimacy of payments under either legislation or under this Agreement, an applicant, a beneficiary or a member of the family shall identify himself to the competent institution in whose territory this person resides or stays by submitting an official proof of identity. Official proof of identity includes a passport or any other valid proof of identity issued in the territory where the person concerned resides or stays.

2. The competent institution identifies the applicant, the beneficiary or the member of the family on the basis of the official proof of identity. The competent institution shall inform the competent institution of the other Contracting State that the identity of the applicant, the beneficiary or the member of the family has been verified by sending a certified copy of the official proof of identity.

Article 12

Verification of Applications and Payments

1. For the purpose of this Article:

- a) “information” shall at least include information regarding identity, address, household, work, income, state of health, detention and death;
- b) “agency” means any organisation competent with respect to the information, referred to in subparagraph a).

2. With regard to an application for or the legitimacy of payment of benefit, the competent institution of one Contracting State shall, at the request of the competent institution of the other Contracting State, verify the information regarding an applicant, a beneficiary or a member of the family. If necessary, this verification shall be carried out together with the agencies. The competent institution shall forward a statement of verification along with authenticated copies of the relevant documents to the competent institution of the other Contracting State.

3. Notwithstanding paragraph 2, the competent institution of one Contracting State shall, without prior request and to the extent possible, inform the competent institution of the other Contracting State of any changes in the information regarding an applicant, a beneficiary or a member of the family.

4. The competent institutions and the competent authorities of the Contracting States may contact each other, as well as the applicants, the beneficiaries, the member of their families, or their representatives, directly.

5. Notwithstanding paragraph 2, the diplomatic or consular representatives and the competent institutions of one Contracting State are allowed to contact the agencies of the other Contracting State directly in order to verify entitlement to benefit and legitimacy of payments to the beneficiaries.

6. For the purposes of implementing this Agreement, the agencies shall lend their good offices and act as though implementing their own legislation. The administrative assistance furnished by the agencies shall be free of charge.

Article 13

Medical Examinations

1. At the request of the competent institution of one Contracting State, the medical examination of an applicant, a beneficiary or a member of his family residing or staying in the territory of the other Contracting State shall be carried out through the competent institution of the latter Contracting State.

2. In order to determine incapacity to work of an applicant, a beneficiary or a member of his family, the competent institution of one Contracting State shall use the medical reports and the administrative data provided by the competent institution of the other Contracting State. However, the competent institution of the first Contracting State may request the applicant, beneficiary or the member of his family to undergo a medical examination by a doctor of its own choice or in its territory.

3. The applicant, the beneficiary or the member of his family shall comply with any request to present himself for medical examination. If the applicant, the beneficiary or the member of his family feels that, for medical reasons, he is unfit to travel to the territory of the other Contracting State, he shall inform the competent institution of that Contracting State immediately. He shall, in that case, submit a medical certificate issued by a doctor designated for this purpose by the competent institution in whose territory he resides or stays. This certificate shall include the medical reasons for his unfitness to travel as well as its expected duration.

4. The costs of the examination shall be paid for by the competent institution at whose request the examination is carried out.

Article 14

Adjustment of Undue Payments

1. If during the assessment or revision of disablement, old age or survivors' benefit under the provisions of this Agreement, the competent institution of either Contracting State has paid to a beneficiary a sum in excess of his entitlement, it may request the competent institution of the other Contracting State responsible for the payment of the corresponding benefit to that person to deduct the amount overpaid from any arrears payable due to him. The latter competent institution shall transfer the amount so deducted to the other competent institution. If adjustment cannot be made in this way, the provisions of the following paragraph shall apply.

2. Where the competent institution of either Contracting State has paid to a beneficiary a sum in excess of his entitlement, referred to in paragraph 1, that institution may, on the conditions and to the extent permissible under the legislation it applies, request the competent institution of the other Contracting State responsible, for the payment of benefit to that person, to deduct the amount overpaid from the payments it is making to him. The latter competent institution shall deduct that amount to the extent to which such deduction is permissible under the legislation it applies, as if the overpayment had been made by it, and shall transfer the amount so deducted to the other competent institution.

3. Where the competent institution of either Contracting State has made an advance payment of benefit to a person for any period and arrears of a corresponding benefit become payable for the same period under the legislation of the other Contracting State, the competent institution of the latter Contracting State shall deduct from those arrears the amount paid by way of advance payment and shall transfer the amount so deducted to the competent institution of the first Contracting State.

Article 15

Recognition of Decisions and Judgements

1. Any decision regarding the adjustment of undue payments or the collection of contributions taken by a competent institution in one Contracting State against which no further legal remedy is available and any court judgement given in relation to such a decision against which no further legal remedy is available, shall be recognised by the other Contracting State.

2. A decision or judgement as referred to in paragraph 1 shall not be recognised:

- a) if such recognition is contrary to public policy in the Contracting State in which recognition is sought;
- b) where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings in sufficient time to enable him to arrange for his defence.

3. Enforceable decisions and judgements recognised pursuant to paragraphs 1 and 2 shall be executed by the other Contracting State in accordance with the statutory provisions in force in the territory of that Contracting State governing the enforcement of similar decisions and judgements.

PART IV

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article 16

Administrative Arrangement

1. The competent authorities of the Contracting States shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.

2. The competent institutions and the liaison bodies of the Contracting States shall be designated in that Arrangement.

Article 17

Mutual Assistance

1. The competent authorities, the competent institutions and the liaison bodies responsible for the implementation of this Agreement:

a) shall communicate with each other, to the extent permitted by the legislation which they administer, any information necessary for the implementation of this Agreement;

b) shall communicate with each other, as soon as possible, all information about the measures taken by them for the implementation of this Agreement or about changes in their respective legislation in so far as these changes affect the implementation of this Agreement.

2. The assistance referred to in paragraph 1 of this Article shall be provided free of charge, subject to any exceptions to be agreed upon by competent authorities of the Contracting States in the Administrative Arrangement concluded pursuant to Article 16.

Article 18

Language of Communication

1. For the implementation of this Agreement English shall be the language of communication.

2. An application or document may not be rejected by the competent authority, the competent institution or the liaison body of one Contracting State solely because it is in the official language of the other Contracting State.

Article 19

Resolution of Disputes

Any disagreement regarding the interpretation or implementation of this Agreement shall be resolved by consultation between the competent authorities of the Contracting States.

Article 20

Confidentiality of Information

Unless otherwise required by laws and regulations of one Contracting State, information about an individual which is transmitted in accordance with this Agreement to the competent authority or the competent institution of that Contracting State by the competent authority or the

competent institution of the other Contracting State shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by the competent authority or the competent institution of one Contracting State shall be governed by the laws and regulations of that Contracting State for the protection of privacy and confidentiality of personal data.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 21

Entry into Force

The Contracting States shall notify each other in writing of the completion of their respective constitutional or legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month after the date of the last notification.

Article 22

Period of Duration and Termination

This Agreement shall remain in force without any limitation of its duration. It may be terminated at any time by either Contracting State giving twelve months' notice in writing to the other Contracting State.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at New Delhi on this 22nd day of October 2009, in the English language.

For the Kingdom of the Netherlands:

J.P.H. DONNER

For the Republic of India:

V. RAVI

Op 22 oktober 2009 is eveneens een Administratief Akkoord tot stand gekomen ter uitvoering van artikel 16 van het Verdrag. De tekst van dit Akkoord luidt als volgt:

Administrative Arrangement for the implementations of the Agreement on Social Security between the Kingdom of the Netherlands and the Republic of India

Pursuant to Article 16 of the Agreement on Social Security between the Kingdom of the Netherlands and the Republic of India, signed at New Delhi on the 22th¹⁾ of October 2009, the competent authorities:

for the Kingdom of the Netherlands,
the Minister for Social Affairs and Employment
for the Republic of India,
the Minister of Overseas Indian Affairs,

have agreed on the following provisions for the application of the Agreement:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the application of this Administrative Arrangement, “Agreement” means: the Agreement on Social Security between the Republic of India and the Kingdom of the Netherlands, signed at New Delhi on the 22th¹⁾ of October 2009.

2. Any other term used in this Administrative Arrangement will have the same meaning given to it in the Agreement.

Article 2

Competent institutions and liaison bodies

1. Pursuant to Article 16, paragraph 2 of the Agreement, the following institutions are designated as:

- A) Competent institution:
a) for the Republic of India:

¹⁾ Noot redactie: hier dient „22nd” te worden gelezen.

- i) as regards old age and survivors' pension for employed persons: Employees' Provident Fund Organization;
 - ii) as regards the Permanent Total Disability pension for employed persons: Employees' Provident Fund Organization, and
 - iii) for the application of Part II of the Agreement: Employees' Provident Fund Organization.
- b) for the Kingdom of the Netherlands:
 - i) as regards old age and survivors' benefit: Sociale verzekeringsbank (Social Insurance Bank), Amstelveen; and
 - ii) as regards disablement benefit: Uitvoeringsinstituut werknemersverzekeringen (Institute for Employee Benefit Schemes), Amsterdam; and
 - iii) for the application of Part II of the Agreement: Sociale verzekeringsbank (Social Insurance Bank), Amstelveen.
- B) Liaison bodies:
 - c) for the Republic of India:
 - i) as regards old age and survivors' pension for employed persons: Employees' Provident Fund Organization;
 - ii) as regards the Permanent Total Disability pension for employed persons: Employees' Provident Fund Organization; and
 - iii) for the application of Part II of the Agreement: Employees' Provident Fund Organization.
 - d) for the Kingdom of the Netherlands:
 - i) as regards old age and survivors' benefit: Sociale verzekeringsbank (Social Insurance Bank), Amstelveen; and
 - ii) as regards disablement benefit: Uitvoeringsinstituut werknemersverzekeringen (Institute for Employee Benefit Schemes), Amsterdam; and
 - iii) for the application of part II of the Agreement: Sociale verzekeringsbank, (Social Insurance Bank), Amstelveen.

2. For the application of the Agreement, the liaison bodies communicate directly with each other as well as with the persons concerned or their representatives.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 3

Coverage of Employed and Self-employed Persons

1. a) For the application of Article 6 (b) of the Agreement, the competent institution of the Contracting State whose legislation is being applied shall at the request of the employer declare that the person is subject to the legislation of that Contracting State.

b) For the application of the Articles 7, 8 and 9 of the Agreement, the competent institution of the Contracting State whose legislation is being applied shall issue to the person concerned a certificate, showing that this person, and the members of the family who accompany this person, remain subject to the legislation and remains liable for contributions under that legislation. In the certificate, the period for which it remains valid will be indicated.

c) When the person, referred to in sub-paragraph a), takes up an employment in the territory of the other Contracting State for a different employer located in that territory, this person must, without delay, inform the competent institution that has issued the certificate. The competent institution will thereupon revoke the certificate and inform the institution of the other Contracting State.

d) Until revoked, a certificate issued under sub-paragraph a) will be accepted as evidence that the person concerned is not subject to the legislation of the other Contracting State in respect of the work or employment for which the certificate was issued.

2. The competent institution of the Contracting State that has issued a certificate under the first paragraph, under a), will send copies of it to the person concerned, to the person's employer and to the competent institution of the other Contracting State.

PART III

PROVISIONS CONCERNING BENEFITS

Article 4

Applications, Appeals and Declarations

1. If a competent institution of a Contracting State receives an application for a benefit, an appeal or any other declaration under the legislation of the other Contracting State, that competent institution shall

send the application, appeal or declaration without delay to the competent institution of the other Contracting State, indicating the date on which it has been received in the first Contracting State.

2. With respect to an application, mentioned in the first paragraph, the competent institution of the first Contracting State shall provide, upon request of the competent institution of the other Contracting State, this institution with any available information in its possession, which may be necessary for the competent institution of the other Contracting State to establish the applicant's entitlement to the benefit.

3. When an application for a benefit under the legislation of a Contracting State or any other declaration necessary for the payment of a benefit is submitted to the competent institution of the other Contracting State, that competent institution checks, within the limits of its authority, whether the document attached to that application fulfils the formalities of the certifications issued by the relevant authority.

Article 5

Medical Information concerning the Disability of an Applicant or Beneficiary

1. With reference to Article 13 of the Agreement, the competent institution of one Contracting State shall, upon the request of the competent institution of the other Contracting State, to the extent permitted by the legislation which it administers and by the other respective laws and regulations applicable in that Contracting State, provide available medical information in its possession concerning the disability of an applicant or beneficiary.

2. The competent institutions of the Contracting States shall make the necessary arrangements for the medical examination of the applicant or beneficiary.

Article 6

Payment of benefits

Except where Article 14 of the Agreement is applied, benefits shall be paid out directly to the beneficiaries.

PART IV

MISCELLANEOUS PROVISIONS

Article 7

Forms and Procedures

1. The competent institutions of the Contracting States shall agree on the forms and other documents, as well as on the procedures, necessary for the implementation of the Agreement and this Administrative Arrangement.

2. The liaison bodies of the Contracting States where the applicant is residing, shall be of assistance regarding the application for a benefit under the legislation of the other Contracting State and shall, to the extent possible and without prior request, inform the liaison body of the other Contracting State of circumstances which may be of importance when deciding on a benefit, and of circumstances which may be of influence to the continuation of the right or the amount of a benefit.

Article 8

Implementation

The competent institutions of the Contracting States shall, by means of supplementary arrangement, establish measures for the application of the Agreement and this Administrative Arrangement.

Article 9

Exchange of Statistics

The liaison bodies of the Contracting States will exchange statistics on an annual basis, and in a form to be agreed upon, regarding the payments which each has made under the Agreement and the certificates issued according to Articles 7, 8 and 9 of the Agreement. The statistics will include data on the number of beneficiaries, the total amount of benefits paid by type of benefit, the number of certificates issued and such other relevant information as necessary.

Article 10

Entry into Effect

1. This Administrative Arrangement will take effect on the date of entry into force of the Agreement and will remain in effect while the Agreement remains in force.

2. The competent authorities may notify each other, in writing, of changes in the names of the competent institutions or the liaison bodies without the need to modify the Administrative Arrangement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Administrative Arrangement.

DONE in duplicate at New Delhi on this 22nd day of October 2009, in the English language.

For the competent authority of the Kingdom of the Netherlands:

J. P. H. DONNER

For the competent authority of the Republic of India:

V. RAVI

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag en het Administratief Akkoord zullen ingevolge artikel 21 van het Verdrag juncto artikel 10 van het Akkoord in werking treden op de eerste dag van de derde maand volgend op de laatste van de data waarop de Verdragsluitende staten elkaar er schriftelijk van in kennis hebben gesteld dat hun respectieve grondwettelijk of wettelijk vereiste procedures voor inwerkingtreding zijn voltooid.

J. VERWIJZINGEN

Titel : Verdrag van Wenen inzake diplomatiek verkeer;
Wenen, 18 april 1961
Tekst : *Trb.* 1962, 101 Frans en Engels)
Trb. 1962, 159 (vertaling)
Laatste *Trb.* : *Trb.* 1994, 212

Titel : Verdrag van Wenen inzake consulaire betrekkingen;
Wenen, 24 april 1963
Tekst : *Trb.* 1965, 40 (Engels, Frans en Spaans)
Trb. 1981, 143 (vertaling)
Laatste *Trb.* : *Trb.* 1994, 213

Uitgegeven de *zevenentwintigste* november 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN