

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 114

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Zuid-Afrika inzake sociale zekerheid;
16 mei 2001*

B. TEKST

**Agreement between the Government of the Kingdom of the
Netherlands and the Government of the Republic of South Africa
on Social Security**

The Government of the Kingdom of the Netherlands
and

the Government of the Republic of South Africa (hereinafter jointly
referred to as the “Parties” and separately as a “Party”)

Wishing to establish relations in the field of social security between
the respective countries,

Desiring to regulate the cooperation regarding social security between
the two countries to ensure the application of the relevant legislation in
the respective countries,

Hereby agree as follows:

Article 1

Definitions

1. For the purpose of this Agreement except where the context indicates otherwise:

- “beneficiary” means a person who applies for or who is entitled to a benefit;
- “benefit” means any cash benefit or pension under the legislation;

– “legislation” means the legislation relating to the branches of social insurance mentioned under Article 2 a) and the legislation mentioned under Article 2 b);

– “member of the family” means a person defined, or recognized as such by the legislation;

– “territory” means in relation to the:

a) Kingdom of the Netherlands the territory of the Kingdom in Europe; and

b) Republic of South Africa the territory of the Republic of South Africa.

2. Other terms and expressions which are used in this Agreement shall have the meanings respectively assigned to them in the legislation of either Party.

Article 2

Material scope

This Agreement shall apply with respect to the:

a) Kingdom of the Netherlands, to the Netherlands’ legislation concerning the following branches of social security:

(i) sickness and maternity benefits;

(ii) disablement benefits for employed persons;

(iii) disablement benefits for self-employed persons;

(iv) old age benefits;

(v) survivors’ benefits;

(vi) child benefits.

b) Republic of South Africa, to the following legislation:

(i) Social Assistance Act 1992 (Act No. 59 of 1992);

(ii) Labour Relations Act 1995 (Act No. 66 of 1995);

(iii) Pension Funds Act 1956 (Act No. 24 of 1956);

(iv) Compensation for Occupational Injuries and Diseases Act 1993 (Act No. 130 of 1993);

(v) Road Accident Fund Act 1996 (Act No. 56 of 1996);

(vi) Unemployment Insurance Act 1966 (Act No. 30 of 1966);

(vii) Basic Conditions of Employment Act 1997 (Act No. 75 of 1997).

Article 3

Competent Authorities

The competent authorities for the implementation of this Agreement shall be:

a) in the case of the Kingdom of the Netherlands the Minister of Social Affairs and Employment of the Netherlands; and

b) in the case of the Republic of South Africa the Minister of Social Development.

Article 4

Competent Institutions

1. In the case of the Kingdom of the Netherlands the competent institutions with regard to the branches of social insurance referred to in:

a) Article 2 a) (i)-(iii) shall be the “Landelijk instituut sociale verzekeringen” (National Institute for Social Insurance) c/o Gak Nederland bv;

b) Article 2 a) (iv)-(vi) shall be the “Sociale Verzekeringsbank” (Social Insurance Bank); or

c) any body authorized to perform any functions at present exercised by the said institutions.

2. In the case of the Republic of South Africa the competent institutions to enforce the conditions of this Agreement shall be:

a) the national Department of Social Development;

b) provincial Departments of Welfare;

c) the Department of Transport;

d) the Department of Labour;

e) the National Treasury; or

f) any body authorized to perform any functions at present exercised by the said institutions.

Article 5

Personal scope

Unless otherwise provided, this Agreement shall apply to any beneficiary as well as to members of their family as long as they reside in the territory of one of the Parties.

Article 6

Export of benefits

Unless otherwise provided in this Agreement, the Netherlands’ legislation which restricts payment of a benefit solely because the beneficiary or the member of his family resides outside the territory of the Kingdom of the Netherlands, shall not be applicable with respect to beneficiaries or to members of their families who reside in the territory of the Republic of South Africa.

Article 7

Identification

1. A beneficiary or a member of his or her family shall submit positive proof of identity to the relevant competent institution in the country where he or she resides.

2. The competent institution referred to in paragraph (1) shall inform the relevant competent institution of the other Party that the beneficiary or a member of his or her family has been positively identified and shall submit a copy of the identification to that competent institution.

3. The beneficiary or member of his or her family shall use a form of identity document accepted by the domestic law of the countries of the respective Parties.

Article 8

Verification of applications and payments

1. For the purpose of this Article:

a) “authority” means an organization that is involved in the implementation of this Agreement, and includes *inter alia*:

- (i) the population registers;
- (ii) tax authorities;
- (iii) marriage registers;
- (iv) employment agencies;
- (v) schools and other educational institutes;
- (vi) trade authorities;
- (vii) police;
- (viii) prison services, and
- (ix) immigration offices.

b) “information” means at least information on the beneficiary or the member of his or her family regarding his or her:

- (i) identity;
- (ii) address;
- (iii) composition of the household;
- (iv) work;
- (v) education;
- (vi) income;
- (vii) medical condition;
- (viii) decease, and
- (ix) detention.

2. Concerning the application for, or the legitimacy of payment of benefits, the competent institution of a Party shall, at the request of the competent institution of the other Party, verify the information regarding the beneficiary or the members of his family. If necessary, this verification is to be carried out by the relevant authorities. The competent institution shall forward a statement of the verification along with authenticated copies of the relevant documents to the competent institution of the other Party.

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

4. The competent institutions of the Parties shall contact each other, as well as the beneficiaries, the members of their family, or their representatives, directly.

5. Notwithstanding paragraph (2), the diplomatic or consular representatives and the competent institutions of a Party shall be allowed to contact the relevant authorities of the other Party directly in order to verify entitlement to benefits and legitimacy of payments to the beneficiaries.

6. The relevant authorities shall lend their good offices and act as though implementing their own legislation. The administrative assistance furnished by the relevant authorities shall be free of charge. However, the competent authorities or the competent institutions of the Parties may agree to certain expenses being reimbursed.

Article 9

Verification of information in case of sickness and invalidity

1. In order to determine whether a beneficiary or a member of his or her family is unable to work, the competent institution of a Party may use the medical reports and other information provided by the competent institution of the Party in whose country the beneficiary resides. The first mentioned competent institution may request the beneficiary or the member of his or her family to undergo a medical examination by a doctor of its own choice or a medical examination in its territory.

2. The beneficiary shall comply with any request referred to in paragraph 1 by presenting himself for medical examination. If the beneficiary feels that, for medical reasons, he is unfit to travel to the territory of the other Party, he shall inform the competent institution of that Party immediately. He shall, in that case, submit a medical statement issued by a doctor designated for this purpose by the competent institution in whose territory he resides. This statement shall include the medical reasons for his unfitness for traveling as well as the expected duration of this unfitness.

3. The costs of the examinations under this Article and, as the case may be, expenses for travel and accommodation, shall be borne by the competent institution at whose request the examination is carried out.

Article 10

Recovery of undue payments and administrative penalties

1. Any enforceable decision by a court or a competent institution of a Party regarding the recovery of undue benefits and administrative penalties by virtue of the legislation, shall be recognized by the other Party.

2. Recognition may only be refused if it is contrary to the public interest of the Party where the decision should be enforced.

3. Any enforceable decision recognized in accordance with paragraph 1 shall be enforced by the other Party in accordance with the domestic law of the country of that Party governing the enforcement of similar decisions and judgments.

4. If a beneficiary has been unduly paid by a competent institution of a Party and he receives a benefit by the competent institution of the other Party, the first mentioned competent institution may request to balance the undue payment with the arrears or amounts still due to the beneficiary in the country of the last mentioned Party.

Article 11

Collection of contributions and administrative penalties

1. Any enforceable decision by a court or a competent institution of a Party regarding the collection of social security contributions and administrative penalties by virtue of the legislation, shall be recognized by the other Party.

2. Recognition may only be refused if it is contrary to the public interest of the Party where the decision should be enforced.

3. Any enforceable decision recognized in accordance with paragraph 1 shall be enforced by the other Party in accordance with the domestic law of the country of that Party governing the enforcement of similar decisions and judgments.

Article 12

Refusal to pay, suspension, withdrawal

1. A competent institution of a Party may refuse to grant a benefit, or may suspend or withdraw the payment of a benefit, if

- a) the beneficiary fails to provide identification or to undergo medical examinations as required under Article 7 and Article 9, 1 and 2, or
- b) if the relevant competent institution of the other Party fails to provide proof of identification or fails to provide information as required under Article 7 and Article 8, 2.

2. The administrative procedures in the cases referred to in paragraph 1 shall be agreed upon between the competent institutions on the conditions and to the extent permissible under the applicable legislation.

Article 13

Implementation of the Agreement

The competent institutions of the Parties may establish, by means of supplementary arrangements, measures for the application of this Agreement.

Article 14

Data protection

1. Where, under this Agreement, the competent authorities or competent institutions of a Party communicate personal data to the competent authorities or competent institutions of the other Party, that communication shall be subject to the domestic law regarding the protection of data in the country of the Party providing the data. Any subsequent transmission as well as storage, alteration and destruction of the communicated data shall be subject to the domestic law regarding data protection in the country of the receiving Party.

2. The use of personal data for purposes other than those of social security shall be subject to the approval of the person concerned or in accordance with other guarantees provided for by the domestic law of the country of the Parties.

Article 15

Settlement of disputes

Any disputes between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultations or negotiations between them.

Article 16

Amendment

This Agreement may be amended by mutual consent of the Parties through an exchange of notes between the Parties through the diplomatic channel.

Article 17

Entry into force

1. This Agreement shall enter into force after each Party has notified the other Party in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the entry into force of this Agreement.

2. The date of entry into force shall be the first day of the second month after the date of the last notification, on the understanding that the Netherlands shall apply Article 6 provisionally from the first day of the second month following the date of signature.

Article 18

Application of the Agreement

In relation to the Kingdom of the Netherlands, this Agreement shall only apply to the territory of the Kingdom in Europe.

Article 19

Termination of the Agreement

This Agreement may be terminated by written notice through the diplomatic channel at any time by either Party. In the event of the termination, this Agreement shall remain in force until the end of the calendar year following the year in which the notice of termination has been received by the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed and sealed this Agreement in duplicate in the English language both texts being equally authentic.

DONE at The Hague on this 16th day of May 2001.

For the Government of the Kingdom of the Netherlands

(s.) J. F. HOOGERVORST

For the Government of the Republic of South Africa

(s.) Z. S. T. SKWEYIYA

D. PARLEMENT

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

De voorlopige toepassing van artikel 6 van het Verdrag (zie rubriek G hieronder) is in overeenstemming met artikel 15, vierde lid van de Rijkswet goedkeuring en bekendmaking verdragen medegedeeld aan de Eerste en Tweede Kamer der Staten-Generaal bij brieven van 23 mei 2001.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 17 in werking treden op de eerste dag van de tweede maand na de datum van de laatste schriftelijke kennisgeving door de Verdragsluitende Partijen dat aan de constitutionele vereisten voor inwerkingtreding van het Verdrag is voldaan.

Ingevolge artikel 17, tweede lid, zal artikel 6 van het Verdrag vanaf 1 juli 2001 voorlopig worden toegepast.

Wat het Koninkrijk der Nederlanden betreft, geldt het Verdrag ingevolge artikel 18 alleen voor Nederland.

J. GEGEVENS

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het Verdrag zal zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *tweëntwintigste* juni 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN