

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 163

A. TITEL

*Verdrag inzake sociale zekerheid tussen
het Koninkrijk der Nederlanden en Malta;
Rome, 11 september 2001*

B. TEKST

**Agreement on social security between the Government of the
Kingdom of the Netherlands and the Government of Malta**

The Government of the Kingdom of the Netherlands

and

the Government of Malta,

hereinafter referred to as “the Contracting Parties”,

Being desirous of regulating relations between the two states in the field of social security, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the purpose of this Agreement:
 - a) “Malta” has the meaning assigned to it in the Constitution of Malta and “the Netherlands” means the Kingdom of the Netherlands;
 - b) “territory” means in relation to Malta, the Island of Malta, the

Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof; and in relation to the Kingdom of the Netherlands the territory of the Kingdom in Europe;

c) “national” means a person of the nationality of either Contracting Party;

d) “legislation” means laws, ordinances and administrative regulations relating to the systems and branches of social security as specified in Article 2;

e) “competent authority” means, in relation to Malta the Minister from time to time in charge of the Department of Social Security in Malta, and in relation to the Kingdom of the Netherlands the Minister of Social Affairs and Employment of the Netherlands, or any person or body authorised to perform the functions at present exercised by the said authority;

f) “competent institution” means the institution which is competent under the applicable legislation of each Contracting Party as specified in Article 2;

g) “benefit” means, as regards a Contracting Party, any cash benefit, pension or allowance for which provision is made in the legislation of that Contracting Party and includes any supplements or increases applicable to such a cash benefit, pension or allowance by virtue of the legislation specified in Article 2;

h) “residence” means legal ordinary residence as defined in the legislation of either Contracting Party;

i) “period of insurance” means periods of contributions, occupational activity or residence and equivalent periods completed under the legislation of each Contracting Party;

j) the term “refugee” has the meaning assigned to it in Article 1 of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951, and in Article 1, paragraph 2, of the Protocol on the Status of Refugees of 31 January 1967;

k) the term “stateless person” has the meaning assigned to it in Article 1 of the Convention of Stateless Persons, signed at New York on 28 September 1954;

l) “members of the family” means the persons defined, or recognised as such by the legislation applied by the competent institutions;

m) “employed person” means a person who is employed by an employer as well as any person who is deemed equivalent to an employed person by the legislation of either Contracting Party;

n) “self-employed person” means the person defined, or recognised as such by the legislation of either Contracting Party;

o) “institution of place of residence” means the institution empowered, under the Contracting Party’s legislation which it applies, to provide the benefits in question at the place of residence or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned;

p) “institution of the place of temporary stay” means the institution

empowered, under the Contracting Party's legislation which it applies, to provide the benefits in question at the place of temporary stay or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned.

2. Other terms used in this Agreement shall have the meaning respectively assigned to them in the legislation of either Contracting Party.

Article 2

Matters covered

1. This Agreement shall apply
 - a) with respect to Malta, to the legislation on:
 - (i) sickness and maternity benefits;
 - (ii) pensions in respect of invalidity;
 - (iii) pensions in respect of retirement;
 - (iv) pensions in respect of widowhood;
 - (v) benefits in respect of unemployment;
 - (vi) children's allowances including allowances for children with a disability.
 - b. with respect to the Netherlands, to the legislation on:
 - (i) sickness insurance (cash benefits in the case of sickness and maternity);
 - (ii) disablement insurance for employed persons;
 - (iii) disablement insurance for self-employed persons;
 - (iv) old age insurance;
 - (v) survivors' insurance;
 - (vi) unemployment insurance;
 - (vii) children's allowances.

2. Except as otherwise provided in paragraph 3, this Agreement shall apply also to any legislation which amends, replaces, supplements, consolidates or supersedes the legislation specified in paragraph 1.

3. This Agreement shall not apply to legislation extending the application of the legislation specified in paragraph 1 of this Article to new groups of beneficiaries if the competent authority of that Contracting Party notifies the competent authority of the other Contracting Party within three months from the date of the official publication of the new legislation, that no such extension of the Agreement is intended.

4. This Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.

Article 3

Persons covered

Unless otherwise provided in this Agreement, it shall apply to all persons who are or have been subject to the legislation of either or both

Contracting Parties, as well as to members of the family and survivors of such persons insofar as their rights derive from the aforementioned persons.

Article 4

Equal treatment

Unless otherwise provided in this Agreement, the following persons, residing in the territory of either Contracting Party, shall have the same rights and obligations under the legislation of that Contracting Party as its own nationals:

- a) nationals of the other Contracting Party;
- b) refugees and stateless persons;
- c) members of the family and survivors, irrespective of their nationality, of the persons mentioned in paragraph (a) and (b) with regard to rights they derive from such persons.

Article 5

Payment of benefits abroad

1. Unless otherwise provided in this Agreement, any benefits under the legislation described in Article 2, of either Contracting Party, shall not be reduced, modified, suspended or withdrawn on account of the recipient, or the child, residing or staying in the territory of the other Contracting Party, and these benefits shall be paid in the territory of the other Contracting Party.

2. Unless otherwise provided in this Agreement, benefits payable under this Agreement by one Contracting Party to a person who is in the territory of the other Contracting Party shall be paid to that person when that person, or the child, is in the territory of a third State, under the same conditions and to the same extent as to nationals of the first Contracting Party, residing or staying in that third State.

Article 6

Prevention of overlapping of benefits and of income tests

1. Any provisions of the legislation of either Contracting Party that are aimed at the reduction, suspension or withdrawal of benefits in cases where there is an overlap with other benefits or other income, or because of an occupational activity, shall also apply to a beneficiary in respect of benefits acquired under the legislation of the other Contracting Party or in respect of income received, or an occupation carried out in the territory of the other Contracting Party.

2. Where a Contracting Party pays a benefit to a person residing in the territory of the other Contracting Party, the former Contracting Party will disregard any income tested benefit paid to that person by the latter Contracting Party.

PART II

APPLICABLE LEGISLATION

Article 7

General rules

1. Persons to whom the provisions of this Part of the Agreement apply shall be subject to the legislation of one Contracting Party only. That legislation shall be determined in accordance with the provisions of Articles 8 to 12.

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

Article 8

Employed persons

1. A person who is employed in the territory of either Contracting Party shall, with respect to that employment, be subject to the legislation of only that Contracting Party, even if he resides in the territory of the other Contracting Party, or if his employer or the registered office of his employer is located in the territory of the other Contracting Party.

2. A self-employed person who follows his occupation in the territory of either Contracting Party shall be subject to the legislation of that Contracting Party, even if he resides in the territory of the other Contracting Party.

3. Civil servants of either Contracting Party and persons deemed as such shall be subject to the legislation of the Contracting Party in whose administration they are employed.

Article 9

Posted workers

1. A person who is employed in the territory of either Contracting Party and who is assigned to perform work in the territory of the other Contracting Party for his or her employer shall, in respect of that work, be subject only to the legislation of the former Contracting Party as though that work was performed in its territory and provided that such assignment does not exceed 24 months and the person concerned is not also employed in the territory of the other Contracting Party by a different employer located in that territory.

2. If, under paragraph 1, a person continues to be subject to the legislation of a Contracting Party from whose territory he has been sent to the territory of the other Contracting Party, that paragraph shall also apply by analogy to the person's family members who accompany him, unless they are themselves employed or self-employed in the territory of the latter Contracting Party.

Article 10

Personnel of international air-transport undertakings

A person who is a member of the travelling or flying personnel of an undertaking which, for hire or on its own account, operates international transport services for passengers or goods by air, and has its registered office in the territory of either Contracting Party shall be subject to the legislation of that Contracting Party, with the following restrictions:

a) where the said undertaking has a branch or permanent representation in the territory of a Contracting Party other than that in which it has its registered office, a person who is employed by such branch or permanent representation shall be subject to the legislation of the Contracting Party in whose territory such branch or permanent representation is situated;

b) where a person is employed principally in the territory of the Contracting Party in which he resides, he shall be subject to the legislation of that Contracting Party, even if the undertaking which employs him has no registered office or branch or permanent representation in its territory.

Article 11

Crew members on vessels

A person who is employed on board a vessel and who is resident in the territory of a Contracting Party shall be subject to the legislation of the Contracting Party on the territory of which the employer has his registered office or his place of business.

Article 12

Personnel of diplomatic and consular missions

1. Nationals of a Contracting Party who are sent by the Government of this Contracting Party to the territory of the other Contracting Party as members of a diplomatic mission or consular post, shall be subject to the legislation of the former Contracting Party.

2. Persons who are employed by a diplomatic mission or consular post of one of the Contracting Parties in the territory of the other Contracting Party, shall be subject to the legislation of the latter Contracting Party.

3. If the diplomatic mission or consular post of one of the Contracting Parties employs persons who according to paragraph 2 of this Article are subject to the legislation of the other Contracting Party, the mission or post shall observe the obligations which the legislation of this Contracting Party imposes on employers.

4. The provisions of paragraphs 2 and 3 of this Article shall apply also to a person employed as a private servant or as a member of the private staff of a person mentioned in paragraph 1 of this Article. In that case the natural person who employs other persons shall observe the obligations which the legislation of the Contracting Party where the employment is performed imposes on employers.

5. The provisions of paragraphs 1 to 4 of this Article do not apply to honorary consular officers or to persons employed in the private service of such persons.

6. If, under paragraph 1, a person continues to be subject to the legislation of a Contracting Party from whose territory he has been sent to the territory of the other Contracting Party, that paragraph shall also apply by analogy to the person's family members who accompany him, unless they are themselves employed or self-employed in the territory of the latter Contracting Party.

Article 13

Exceptions to the provisions of Article 8 to 12

The competent authorities of the two Contracting Parties or the bodies designated by the authority may agree on exceptions from the provisions of Articles 8 to 12 in the interest of employees and hereby establish compulsory insurance under the relevant legislation.

PART III

PROVISIONS CONCERNING BENEFITS

CHAPTER I

SICKNESS AND MATERNITY

Article 14

Aggregation of periods of insurance

1. If the legislation of either Contracting Party makes entitlement to benefits conditional upon the completion of periods of insurance, the competent institution of that Party shall take account, to the extent necessary, of periods of insurance completed under the legislation of the

other Contracting Party, in so far as they do not overlap, as if they were periods of insurance completed under the legislation of the first Contracting Party.

2. As far as entitlement to daily cash benefits in the event of sickness and maternity is concerned, the aggregation mentioned in paragraph 1 of this Article shall be effected only if the person concerned was last engaged in a gainful occupation in the territory of the Contracting Party under whose legislation the application is made.

CHAPTER II

INVALIDITY, OLD-AGE AND DEATH

PROVISIONS FOR THE IMPLEMENTATION OF THE MALTESE LEGISLATION

Article 15

Provisions relating to Maltese invalidity pension

1. Where a person covered by this Agreement, at the time when incapacity for work followed by invalidity occurred, was subject to the Netherlands' legislation on pensions and entitled to a Netherlands' pension on invalidity, and where the person concerned has paid a total insurance period of at least 52 weeks under the Maltese legislation on invalidity, such person shall be entitled to a pro-rata benefit under the latter legislation, calculated according to the rules of Article 17.

2. For the purposes of Article 17 a calendar year that is an insurance period under the Netherlands' insurance as long as such period falls after 1st February 1965 shall be considered as 52 weeks of contributions under the legislation of Malta.

3. For the purposes of this Article, totalization of periods of insurance shall only include such insurance periods in respect of a gainful occupation.

Article 16

Provisions relating to Maltese pensions in respect of Retirement and Widowhood

1. Pensions in respect of Retirement and pensions in respect of Widowhood shall be determined in conformity with the provisions of the Social Security Act (Cap 318) exclusively on the basis of:

- a) the contributions paid or credited in Malta, and
- b) the pensionable income as defined in the Act; so however that such pensionable income shall be calculated solely on the basic wage/salary or net income, as the case may be under the Act, which

- (i) had been earned or received in Malta during the last 10 calendar years immediately preceding his or her retirement or invalidity, as the case may be, or
- (ii) if during the last 10 calendar years immediately preceding his or her retirement or invalidity he or she was a resident of the Netherlands or of a third State with which both Contracting Parties have an Agreement on social security, or was residing in Malta but exempt from the payment of contributions under the legislation of Malta, had been earned or received in Malta during the last 10 calendar years immediately preceding his or her last day of employment/self-employment in Malta.

2. For purposes of paragraph 1, in determining entitlement to a benefit under the legislation of Malta other than a pension in respect of invalidity, a calendar year which is an insurance period under the Netherlands' insurance after the 7th May 1956, shall be considered as 52 weeks of contributions under the legislation of Malta.

3. No totalization of insurance periods shall be made under this Article unless:

- a) in the case of a Two-Thirds Pension (Retirement) payable under the legislation of Malta, the person concerned has paid at least 156 contributions, after 22 January 1979;
- b) in the case of a Survivors' Pension (Widowhood) payable under the legislation of Malta, the deceased spouse of the beneficiary concerned would have paid at least 156 contributions, after 22 January 1979;
- c) in the case of any other pension in respect of retirement or widowhood payable under the legislation of Malta, the person concerned or the spouse (as is the case with a pension in respect of widowhood) has paid at least 52 contributions.

Article 17

Calculation of Maltese benefits

The competent institution of Malta shall first calculate the amount of the theoretical benefit which would be payable if the insurance periods under the legislation of the Netherlands and Malta, totalized as provided for in Article 15 or 16, as required, taking into account periods in a third State with which both Contracting Parties have an Agreement on social security, had been paid or credited under the legislation of Malta alone. The theoretical benefit so calculated shall be pro-rated by the fraction that the total reckonable contributions paid or credited under the legislation of Malta bear to the number of contributions totalized under Article 15 or 16 as required.

PROVISIONS FOR THE IMPLEMENTATION OF THE NETHERLANDS'
LEGISLATION.

Article 18

Provisions relating to the Netherlands' disablement benefits

When a person covered by this Agreement, at the time when incapacity for work followed by disablement occurred, was subject to the Maltese Social Security Act and entitled to a Maltese pension in respect of invalidity, and when the person concerned had previously completed a total insurance period of at least twelve months under the Netherlands' legislation on disablement insurance, he shall be entitled to a benefit under the latter legislation, calculated according to the rules of Article 19.

Article 19

Calculation of the Netherlands' Disablement Benefits

1. The amount of the benefit referred to in Article 18 shall be calculated in proportion to the ratio of the total length of the periods of insurance completed by the person concerned under the Netherlands' legislation after the age of 15 years to the period between the date on which he reached the age of fifteen and the date of his incapacity for work followed by disablement.

2. If, at the time when incapacity for work followed by disablement occurred, the person concerned was an employed person or a person treated as such, the benefit due shall be determined according to the Disablement Benefits Act of 18 February 1966 (WAO). If not, the benefit due shall be determined according to the Self-employed Persons Disablement Benefits Act of 24 April 1997 (WAZ).

3. Periods of insurance completed under the Netherlands' legislation are:

- a) periods of insurance completed under the Disablement Benefits Act of 18 February 1966 (WAO);
- b) periods of insurance completed under the General Disablement Insurance Act of 11 December 1975 (AAW), in so far as these do not coincide with the periods of insurance completed under the aforementioned law of 18 February 1966 (WAO);
- c) periods of insurance completed under the Self-employed Persons Disablement Act of 24 April 1997 (WAZ), in so far as these do not coincide with the periods of insurance completed under the aforementioned law of 18 February 1966 (WAO);
- d) periods of employment and periods treated as such completed in the Netherlands prior to 1 July 1967.

Article 20

Provisions relating to the Netherlands' old age pension

1. In case of old age the Netherlands' competent institution determines the pension directly and exclusively on the basis of the periods of insurance completed under the Netherlands' General Old Age Pensions Act (AOW).

2. Subject to paragraph 3, periods before 1 January 1957 during which a national of a Contracting Party or a person described in Article 4 (b) resided in the territory of the Netherlands after reaching the age of fifteen or during which, while residing in another country, the person was gainfully employed in the Netherlands shall also be considered as insurance periods if the person does not satisfy the conditions of the Netherlands' legislation permitting such periods to be treated for that person as insurance periods.

3. The periods referred to in paragraph 2 of this Article shall be taken into consideration in the calculation of the old-age pension only if the person has been insured within the meaning of Article 6 of the Netherlands' General Old-Age Pensions Act and the person has resided for at least six years in the territory of one or both Contracting Parties after reaching the age of fifty-nine and only while residing in the territory of either Contracting Party. However, these periods shall not be taken into consideration if they coincide with legislation of a country other than the Netherlands.

Article 21

Provisions relating to the Netherlands' survivors' benefits

When a national of one Contracting Party or a person described in paragraph 1(b) of Article 4 was, at the time of death, subject to the Maltese Social Security Act or in receipt of a benefit under this Act, and had previously completed a total insurance period of at least 12 months under the Netherlands' legislation on survivors' insurance, the survivor shall be entitled to a benefit determined in accordance with the latter legislation and calculated according to the provisions of Article 22.

Article 22

Calculation of the Netherlands' survivors' benefit

The amount of the benefit referred to in Article 21 shall be calculated in proportion to the ratio of the length of the periods of insurance completed by the deceased under the Netherlands' legislation before the deceased reached the age of sixty-five to the period between the date on

which the deceased reached the age of fifteen and the date of his death, but at the latest the date on which the deceased reached the age of sixty-five.

CHAPTER III

UNEMPLOYMENT INSURANCE

Article 23

If the legislation of a Contracting Party is applicable to a person, then the periods of insurance, which are to be taken into consideration according to that legislation, shall be totalized in accordance with Article 24, in so far as these periods do not overlap.

Article 24

An employed person, residing in the territory of a Contracting Party, moving to the territory of the other Contracting Party and being last subject to the legislation of this Contracting Party, is entitled to unemployment benefits under the legislation of the latter Contracting Party during his stay on its territory if:

- a) he has been employed in the territory of that party for at least four weeks in total during the last twelve months before submitting the claim; and
- b) he has been licensed for working in the territory of that Contracting Party according to its legislation on the placement of foreign workers.

Article 25

The provisions of Article 5 of this Agreement, as regards the payment of benefits abroad, shall not be applicable to benefits in respect of unemployment.

CHAPTER VI

CHILDREN'S ALLOWANCES

Article 26

1. A person covered under the Netherlands' legislation on children's allowances shall be entitled to children's allowances even if the person covered, or the child, resides in Malta.

2. Entitlement to children's allowances under the Maltese Social Security Act shall not be extinguished if the child in respect of whom such allowance is payable, is residing in the Netherlands.

3. If the conditions for the entitlement to children's allowances are satisfied under the legislation of both Contracting Parties the entitlement to children's allowances shall be awarded solely under the legislation of the Contracting Party in whose territory the child resides.

PART IV

ENFORCEMENT

Article 27

Verification of applications and payments

1. After receipt of an application, the competent institution of the Contracting Party shall verify the information regarding the applicant and, if applicable, any member of the same family and forward this evidence along with other relevant documents to the competent institution of the other Contracting Party, so that the latter can process the application further.

2. Paragraph 1 also applies when the competent institution of a Contracting Party requests the other Contracting Party to conduct an investigation to verify the legitimacy of payments made to beneficiaries living or residing in the territory of that other Contracting Party.

3. The information referred to in the first and second paragraph shall include, to the extent possible, information regarding address, work, education, income, family situation, ability for work or medical condition.

4. The competent institutions of the Contracting Parties may contact each other, as well as their respective beneficiaries or their representatives, directly.

5. The diplomatic or consular representatives and the competent institutions of the Contracting Parties may contact the authorities in the territory of the other Contracting Party directly in order to determine entitlement to benefit and legitimacy of payments to their respective beneficiaries.

6. The term "authorities" mentioned in the previous paragraph is meant to include those authorities responsible for tax, population registers, marriage registers, employment agencies and schools.

7. Without prior request the competent institutions shall inform each other, to the extent possible, of circumstances which may be of importance when deciding on a benefit, and of circumstances which may be of influence to the amount of a benefit, enclosing documentation of the relevant information.

Article 28

Identification

In order to determine the entitlement to benefits and legitimacy of payments under the Maltese or Netherlands' legislation, a person who falls under the scope of this Agreement is obliged to identify himself or herself by submitting an official proof of identity to the competent institution in Malta or the Netherlands.

Article 29

Medical examinations

1. In order to determine the degree of disability for work, the competent institutions of both Contracting Parties shall use the medical reports and the administrative data provided by the competent institutions of the other Contracting Party, but they nevertheless reserve the right to have the claimant or beneficiary examined by a doctor of their own choice or to summon the person involved to undergo a medical examination in the territory of the competent Contracting Party.

2. The person involved is obliged to comply with a request as indicated in the first paragraph of this Article by presenting himself for medical examination. If he feels that, for medical reasons, he is unfit to travel to the territory of the State where he has been summoned by the competent institution, he must inform that institution immediately. He will then be obliged to submit a medical statement issued by a doctor designated for this purpose by the competent institution. This statement must include the medical reasons for his inability to travel as well as the expected duration of his unfitness to travel.

Article 30

Recovery of undue payments

1. If, during the assessment or revision of any benefit under the provisions of Article 2 of the Agreement, the competent institution of either Contracting Party has paid to a beneficiary a sum in excess of his entitlement, it may request the competent institution of the other Contracting Party responsible for the payment of a corresponding benefit to that person to deduct the amount overpaid from any arrears payable due to him. The latter institution shall transfer the amount so deducted to the creditor institution. If recovery cannot be made in this way, the provisions of the following paragraph shall apply.

2. Where the competent institution of either Contracting Party has paid to a beneficiary a sum in excess of his entitlement, that institution may, on the conditions and to the extent permissible under the legisla-

tion it applies, request the competent institution of the other Contracting Party responsible for the payment of benefit to that person to deduct the amount overpaid from the payments it is making to him. The latter 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 creditor institution.

3. Where the competent institution of either Contracting Party has made an advance payment of benefit for a period during which the beneficiary was entitled to a corresponding benefit under the legislation of that Contracting Party, it may request the competent institution of the other Contracting Party to deduct the amount of the advance payments from payments due to him for the same period. The latter institution shall deduct the amount and transfer it to the creditor institution.

Article 31

Enforcement procedures

1. Any enforceable court decision of either Contracting Party as well as enforceable documents issued by a competent authority or institution of either Contracting Party, in respect of social security contributions and other claims shall be recognised in the territory of the other Contracting Party.

2. Recognition may be refused only if it is contrary to the public order of the Contracting Party in whose territory the decision or document should be enforced.

3. The competent institutions of either Contracting Party shall lend their services in terms of this Article free of charge. Where applicable, other costs made for the execution of any enforceable decision or decree such as legal costs, are paid for by the competent institution whose decision or decree is to be executed.

Article 32

Refusal to pay, suspension, withdrawal

The competent institution of a Contracting Party may refuse to pay, suspend or withdraw any benefit, referred in Article 2 of the Agreement, if in its judgement:

- (i) the applicant or beneficiary fails to undergo any examinations or provide any information as required under the Agreement, or
- (ii) if the competent institution of the other Contracting Party fails to provide any information or fails to carry out any examinations as required under the Agreement.

PART V

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article 33

Administrative arrangement

1. The competent authorities of both Contracting Parties shall establish, by means of an administrative arrangement, the measures necessary for the application of this Agreement.
2. The liaison agencies of the Contracting Parties shall be designated in that arrangement.

Article 34

Exchange of information and mutual assistance

1. The competent authorities and competent institutions responsible for the application of this Agreement shall:
 - a) to the extent permitted by the legislation that they administer, communicate to each other any information necessary for the application of this Agreement;
 - b) lend their good offices and furnish assistance to one another with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies, as if the matter involved the application of their own legislation;
 - c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement.
2. Where a person who resides or stays in the territory of either Contracting Party has claimed or is receiving benefit under the legislation of the other Contracting Party, and a medical examination is necessary, the competent institution or the institution of the place of residence or of temporary residence of the first Contracting Party shall arrange for such examination if the competent institution of the latter Contracting Party so requests. Such examination shall be free of charge.
3. Unless disclosure is required under the legislation of either Contracting Party, any information about an individual which is sent to that Contracting Party by the other Contracting Party in accordance with, and for the purpose of, this Agreement shall be deemed confidential and be used only for the purpose of implementing this Agreement and the legislation to which this Agreement applies.

Article 35

Language

1. For the purposes of the application of this Agreement, the competent authorities and the competent institutions of the two Contracting Parties may communicate with one another and with all interested parties, whatever their place of residence, directly in English.

2. A claim or document shall not be rejected on the grounds that it is written in one of the official languages of the Contracting Parties. However, if a claim or a document is presented in the language of either Contracting Party the competent institution to which it is presented shall provide for a translation into the English language.

Article 36

Exemptions from charges and authentication

If the legislation of either Contracting Party provides that any certificate or other document which is submitted under the legislation of that Contracting Party shall be exempt, either wholly or partly, from any taxes, legal dues, consular fees or administrative charges, such exemption shall apply to any certificate or other document which is submitted under the legislation of the other Contracting Party or in accordance with this Agreement.

Article 37

Submission of a claim, notice or appeal

1. Any claim, notice or appeal concerning the determination of eligibility for, or payment of, a benefit under the legislation of one Contracting Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority, institution or tribunal of that Contracting Party, but which is presented within the same period to a competent authority, institution or tribunal of the other Contracting Party, shall be treated as if it had been presented to the competent authority, institution or tribunal of the first Contracting Party. The competent authority, institution or tribunal of the latter Contracting Party shall without delay forward them to the competent authority, institution or tribunal of the former Contracting Party. The date on which such a claim, notice or appeal was submitted to the competent authority, institution or tribunal of the first Contracting Party, shall be considered as the date of its submission to the competent authority, institution, or tribunal of the other Contracting Party.

2. A claim for a benefit payable under the legislation of one Contracting Party made after the date of entry into force of this Agreement shall be deemed to be a claim for the corresponding benefit under the legis-

lation of the other Contracting Party, provided that the applicant at the time of the application provides information indicating that insurance periods have been completed under the legislation of the other Contracting Party.

3. In any case to which paragraph (1) or (2) applies, the competent authority, institution or tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the competent authority, institution or tribunal of the other Contracting Party.

Article 38

Payment of benefits

The competent institution or authority of either Contracting Party shall discharge its obligations under this Agreement in the currency of that Contracting Party.

Article 39

Resolution of disputes

1. The competent authorities of both Contracting Parties shall resolve, to the extent possible, any dispute which arises in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. If any dispute cannot be resolved in accordance with paragraph 1, it shall be submitted to an arbitration tribunal whose composition and procedure shall be agreed upon by the Contracting Parties. The arbitration tribunal shall settle the dispute in accordance with the spirit and fundamental principles of this Agreement. The arbitration shall be final and binding for the Contracting Parties involved.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 40

Transitional provisions

1. This Agreement shall confer no rights for any period before its entry into force.

2. All periods of insurance completed under the legislation of a Contracting Party before the entry into force of this Agreement shall be taken into account for the purpose of determining rights arising from this Agreement.

3. Subject to paragraph (1) of this Article, rights may arise under this Agreement even in respect of a contingency which arose before its entry into force.

4. Any benefits due only by virtue of this Agreement shall be determined, at the request of the person concerned and in accordance with the provisions of this Agreement, with effect from the entry into force of this Agreement, unless the rights previously determined have given rise to a lump-sum payment.

5. Where the request referred to in paragraph (4) of this Article is submitted within two years after the entry into force of this Agreement, the rights arising in accordance with the provisions of this Agreement shall be acquired as from the date of entry into force, and those provisions of the legislation of either Contracting Party concerning the forfeiture or limitation of rights shall not be invoked against the person concerned.

6. Any benefit which has been determined before the date of entry into force of this Agreement shall not be recalculated, unless requested by the beneficiary.

Article 41

Ratification, entry into force and jurisdiction

1. The Contracting Parties shall notify each other in writing of the completion of their respective legal or constitutional procedures required for the entry into force of this Agreement.

2. The Agreement shall enter into force on the first day of the second month following the month in which the last instruments of ratification are exchanged.

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

Article 42

Duration of the Agreement

This Agreement shall remain in force without any limitation on its duration. It may be denounced at any time by either Contracting Party, by giving at least three months notice in writing to the other Contracting Party, in which case such Agreement shall no longer remain in force with effect from the first day of the calendar year following the year of its denouncement.

Article 43

Termination of the Agreement

1. In the event of denunciation of this Agreement, all rights acquired under its provisions shall be maintained.

2. Rights in process of acquisition in respect of periods before the date on which the denunciation takes effect shall not lapse as a result of the denunciation; their subsequent continued recognition shall be determined by agreement or, failing such agreement, by the legislation which the competent institution applies.

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

DONE in duplicate at Rome on 11 September 2001, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) R. LOUDON

For the Government of Malta

(sd.) JOSEPH CASSAR

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.

E. BEKRACHTIGING

Bekrachtiging van het Verdrag is voorzien in artikel 41, tweede lid.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 41, tweede lid, van het onderhavige Verdrag in werking treden op de eerste dag van de tweede maand volgend op de maand waarin de laatste akte van bekrachtiging door Partijen is overgelegd.

J. GEGEVENS

Van het op 28 juli 1951 te Genève tot stand gekomen Verdrag betreffende de status van vluchtelingen, naar welk Verdrag in artikel 1, eerste lid, onderdeel j, wordt verwezen, zijn de Engelse en Franse tekst geplaatst in *Trb.* 1951, 131 en de vertaling in *Trb.* 1954, 88. Zie ook, laatstelijk, *Trb.* 1995, 136.

Van het op 28 september 1954 te New York tot stand gekomen Ver-

drag betreffende de status van staatlozen, naar welk Verdrag in artikel 1, eerste lid, onderdeel k, wordt verwezen, zijn de Engelse en Franse tekst geplaatst in *Trb.* 1955, 42 en de vertaling in *Trb.* 1957, 22. Zie ook, laatstelijk, *Trb.* 1995, 137.

Van het op 31 januari 1967 te New York tot stand gekomen Protocol betreffende de status van vluchtelingen, naar welk Protocol in artikel 1, eerste lid, onderdeel j, wordt verwezen, zijn de Engelse en Franse tekst en de vertaling geplaatst in *Trb.* 1967, 76. Zie ook, laatstelijk, *Trb.* 1995, 138.

Op 11 september 2001 is te Rome eveneens ondertekend een Administratief Akkoord ter uitvoering van het onderhavige Verdrag. De tekst van dit Akkoord luidt als volgt:

**Administrative Arrangement for the implementation of the
Agreement on social security between the Government of the
Kingdom of the Netherlands and the Government of Malta signed
at Rome on 11 September 2001**

Pursuant to Article 33 of the Agreement on Social Security between the Government of the Kingdom of the Netherlands and the Government of Malta, signed at Rome on 11 September 2001, the competent authorities:

For the Netherlands,

the Minister of Social Affairs and Employment or any person or body authorised to perform the functions at present exercised by the said authority

For Malta,

the Minister from time to time in charge of the Department of Social Security

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 Government of the Kingdom of the Netherlands and the Government of Malta, signed at Rome on 11 September 2001.

2. The terms used in this Arrangement have the meaning given to them in Article 1 of the Agreement. “Contracting Parties” means the Contracting Parties of the Agreement.

Article 2

Liaison Agencies

1. For the purposes of implementing the Agreement the liaison agencies in accordance with Article 33, paragraph 2, of the Agreement are:
 - a) for Malta: the Department of Social Security;
 - b) for the Netherlands:
 - (i) for old-age and survivors’ pensions and for children’s allowances, as well as for the application of Articles 9 and 13 of Part II of the Agreement: the “Sociale Verzekeringsbank” (Social Insurance Bank), Amstelveen;
 - (ii) in other cases: the “Landelijk instituut sociale verzekeringen” (National institute social insurance) c/o Gak Nederland bv, Amsterdam.
2. For the application of the Agreement the competent institutions of the Contracting Parties may agree upon the appointment of other liaison agencies.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 3

1. For the purpose of this Article “institution” means:
 - a) as regards Malta, the Department of Social Security, and,
 - b) as regards the Netherlands, the “Sociale Verzekeringsbank” (Social Insurance Bank).
2. a) When the legislation of a Contracting Party is applicable in the circumstances described in Article 9, paragraph 1, of the Agreement, the institution of that Contracting Party shall, at the request of the employed person or the employer of that person, issue a certificate certifying, in respect of the work in question, that the employed person is subject to that legislation until the date indicated.
 - b) When the employed person described in sub-paragraph (a) takes on an employment in the territory of the other Contracting Party by a different employer located in that territory, the employed person must, without delay, inform the institution that issued the certificate. That institution will thereupon revoke the certificate, as from the commencing date of the new employment, and inform the institution of the other Contracting Party.

c) Until revoked, a certificate issued under sub-paragraph (a) of this Article shall be accepted as evidence that the employed person is not subject to the legislation of the other Contracting Party in respect of the work or employment for which the certificate was issued.

3. When the legislation of a Contracting Party is applicable by reason of an agreement of the institutions in accordance with Article 13 of the Agreement, the institution of that Contracting Party shall issue a certificate certifying, in respect of the work or employment in question, that the employed person is subject to that legislation.

4. The institution of the Contracting Party that has issued a certificate under paragraph 2(a) or 3 of this Article shall send a copy of it to the institution of the other Contracting Party.

PART III

PROVISIONS CONCERNING BENEFITS

Article 4

Competent institutions

1. For the purpose of implementing the provisions of Part III and Part IV of the Agreement the assigned competent institutions are:

- a) for Malta: the Department of Social Security;
- b) for the Netherlands:
 - (i) for the application of Article 18 and 19 of the Agreement: the “Landelijk instituut sociale verzekeringen” (National institute social insurance) c/o Gak Nederland bv, Amsterdam;
 - (ii) for old-age and survivors’ pensions and for children’s allowances: the Sociale Verzekeringsbank” (Social Insurance Bank), Amstelveen;
 - (iii) for disablement pensions the implementing organisation which is assigned to the employer of the claimant.

Article 5

Identification

1. For the purpose of implementing Article 28 of the Agreement the competent institution of a Contracting Party identifies the claimant on the basis of a proper identification.

2. Proper identification includes a passport or any other valid proof of identity issued by the relevant authorities of the person’s country of residence.

3. The competent institution of one Contracting Party will inform the competent institution of the other Contracting Party that the identity of the claimant has been verified properly by sending a copy of the identification document.

Article 6

Verification and examination in case of invalidity or disablement

1. At the request of the competent institution of a Contracting Party, verification of administrative and medical information, as well as medical examinations, regarding claimants or recipients of a benefit, will be carried out by the competent institution of the other Contracting Party.
2. The information referred to in the first paragraph includes information on the periods of insurance completed under the legislation of the other Contracting Party.
3. In the case where the examination is held by the competent institution in its own territory, or when the competent institution has the claimant or beneficiary examined in the territory of the other Contracting Party by a doctor of its own choice, the travel and accommodation expenses as well as medical examination costs will be paid for by the competent institution requesting such examination.
4. The competent institutions shall inform each other of circumstances which may be of importance when deciding on a benefit, and circumstances which may be of influence to the continuation of the benefit, enclosing relevant medical documents.

Article 7

Payment of benefits

Except where Article 30 of the Agreement is applied, benefits shall be paid out directly to the beneficiaries.

PART IV

MISCELLANEOUS PROVISIONS

Article 8

Forms and Procedures

1. The liaison agencies of the Contracting Party where the claimant is residing, shall be of assistance regarding the application for a benefit under the legislation of the other Contracting Party, and shall, to the extent possible and without prior request, inform the liaison agency of the other Contracting Party 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.
2. If it is not possible for a person concerned to submit a required certificate, the insurance institution requiring the certificate shall address itself to the liaison agency of the other Contracting Party in order to obtain the certificate.

3. The liaison agencies of the Contracting Parties 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.

Article 9

Statistics

The liaison agencies of the Contracting Parties 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. The statistics will include data on the number of beneficiaries and the total amount of benefits paid, by type of benefit.

Article 10

Entry into force

This Administrative Agreement shall enter into force together with the Agreement and may be denounced in accordance with the same rules as apply to the Agreement.

DONE in duplicate at Rome on 11 September 2001, in the English language.

The Competent Authority of the Government of the Kingdom of the Netherlands

(sd.) R. LOUDON

The Competent Authority of the Government of Malta

(sd.) JOSEPH CASSAR

De bepalingen van het Akkoord zullen ingevolge artikel 10 van het Akkoord tegelijk met het onderhavige Verdrag in werking treden.

Uitgegeven de *derde* oktober 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN