

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2006 Nr. 10

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Gambia inzake de export en handhaving van sociale zekerheids-
uitkeringen;
Banjul, 28 november 2005*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the
Republic of The Gambia on the Export and Enforcement of Social
Security Benefits**

The Kingdom of the Netherlands

and

the Republic of The Gambia,

Hereinafter referred to as the Contracting Parties,

Wishing to establish relations in the field of social security;

Desirous of regulating co-operation between the two States to ensure
the enforcement of one country's legislation in the other;

Have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement:

a) "territory" means in relation to the Kingdom of the Netherlands
the territory of the Kingdom in Europe and in relation to The Gambia
the territory of the Republic of The Gambia;

b) "competent authority" means in relation to the Kingdom of the
Netherlands the Minister of Social Affairs and Employment of the

Netherlands; in relation to the Republic of The Gambia the Department of State (Ministry) for Finance and Economic Affairs;

- c) “competent institution” means
 - in relation to the Kingdom of the Netherlands regarding the branches of social insurance mentioned under Article 2, paragraph 1, under c: the “Uitvoeringsinstituut werknemersverzekeringen” (Institute for Employee Benefit Schemes); regarding the branches of social insurance mentioned under Article 2, paragraph 1, under a and b: the “Sociale verzekeringsbank” (Social Insurance Bank); regarding the legislation concerning social assistance it means the institution designated for this purpose by the Netherlands’ competent authority;
 - in relation to the Republic of The Gambia the Social Security and Housing Finance Corporation;
 - or any organisation authorised to perform any function at present exercised by the said institutions;
- d) “agency” means any organisation that is involved in the implementation of this Agreement, and includes *inter alia* the population registers, registers of birth, death and marriages, tax authorities, employment offices, employment agencies and labour authorities, schools and other educational institutions, public registers on real estate, trade authorities, police, prison services and immigration offices, hospitals and public medical facilities;
- e) “legislation” means the laws and regulations on social security mentioned under Article 2;
- f) “benefit” means any cash benefit, pension or gratuities under the legislation;
- g) “beneficiary” means a person who applies for or who is entitled to a benefit according to the legislation which is applicable;
- h) “member of the family” means a person defined, or recognised as such by the legislation;
- i) “to reside” means to ordinarily reside;
- j) “to stay” means to temporarily reside.

2. Other terms used in this Agreement have the meaning given to them under the legislation being applied.

Article 2

Material scope

This Agreement shall apply:

- 1. With respect to the Kingdom of the Netherlands, to the Netherlands’ legislation concerning social assistance and concerning the following branches of social insurance:
 - a) old age pensions;
 - b) survivors’ benefits;

- c) disablement benefits for employed persons.
- 2. With respect to the Republic of The Gambia, to the legislation concerning the following branches of social security:
 - a) retirement benefits;
 - b) invalidity benefits;
 - c) withdrawal benefits;
 - d) survivors' benefits;
 - e) injury compensation benefits;
 - f) redundancy benefits.

Article 3

Personal scope

Unless otherwise provided in this Agreement, this Agreement shall apply to a beneficiary as well as to a member of his family insofar as the beneficiary or the family member resides or stays in the territory of one of the Contracting Parties.

Article 4

Export of benefits

1. Unless otherwise provided in this Agreement, any provision of the legislation of a Contracting Party which restricts payment of a benefit solely because a beneficiary or a member of his family resides or stays outside the territory of that Contracting Party shall not be applicable with respect to a beneficiary or to a member of his family who resides or stays in the territory of the other Contracting Party.

2. As regards the payment of Netherlands' survivors' benefits, in case of more than one survivor the amount will be paid in equal parts to all survivors.

3. Paragraph 1 does not apply to the Netherlands' legislation concerning social assistance and the Netherlands' Supplementary Benefits Act of 6 November 1986.

4. Regarding The Gambia's survivors' benefits, in the case of more than one survivor, the amount will be paid in accordance with the legislation applicable.

Article 5

Identification

1. In order to determine entitlement to a benefit or the legitimacy of the payment of a benefit under Netherlands' or The Gambia's legislation,

a beneficiary or a member of his family shall identify himself to the competent institution in whose territory the person concerned resides or stays by submitting an official proof of identity. Official proof of identity includes a passport or any other valid identity document issued in the territory where the person concerned resides or stays.

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

Article 6

Verification of applications and payments

1. For the purpose of this article, “information” means data regarding identity, address, household and family situation, work, education, income, assets, state of health, death and detention, or any other data relevant for the implementation of this Agreement.

2. With regard to the processing of an application for a benefit or the payment of a benefit, the competent institution of a Contracting Party shall, at the request of the competent institution of the other Contracting Party, verify the information regarding a beneficiary or a member of his 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 Party.

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

4. The competent institutions of the Contracting Parties may directly contact each other, as well as a beneficiary, a member of his family, or an authorised representative of the person concerned.

5. Notwithstanding paragraph 2, the diplomatic or consular representatives and the competent institutions of a Contracting Party shall be allowed to directly contact the agencies of the other Contracting Party in order to verify the entitlement to a benefit or the legitimacy of the payment of a benefit.

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 provided by the agencies shall

be free of charge. However, the competent authorities of the Contracting Parties may agree to some expenses being reimbursed.

Article 7

Medical examinations

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

2. In order to determine the extent of the ability to work of a beneficiary or a member of his family, the competent institution of a Contracting Party shall use the medical reports and the administrative data provided by the competent institution of the other Contracting Party. However, the competent institution of the former Contracting Party reserves the right to have a beneficiary or a member of his family undergo a medical examination by a doctor of its own choice or in the territory where the competent institution is situated.

3. The beneficiary or the member of his family shall comply with any request to present himself for medical examination. If the person concerned, for medical reasons, is unfit to travel to the territory of the other Contracting Party, he shall inform the competent institution of that Contracting Party 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 prove the medical reasons for his unfitness to travel as well as its expected duration.

4. The costs of the examination and, as the case may be, the expenses for travel and accommodation shall be paid for by the competent institution at whose request the examination is carried out.

Article 8

Data protection

1. Where, under this Agreement, the competent authorities, the competent institutions or the agencies of a Contracting Party communicate personal data to the competent authorities, the competent institutions of the other Contracting Party, or the diplomatic or consular representatives of the other Contracting Party, that communication shall be subject to the legal provisions governing protection of data laid down by the Contracting Party providing the data. Any subsequent transmission as well as storage, alteration and destruction of the data shall be subject to the provisions of the legislation on data protection of the receiving Contracting 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 national legislation.

Article 9

Implementation of the Agreement

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

Article 10

Language

1. For the purpose of applying this Agreement, the competent authorities, the competent institutions and the agencies of the Contracting Parties may communicate directly with one another in the English language.

2. No document shall be rejected on the sole ground that it is written in an official language of a Contracting Party.

Article 11

Settlement of disputes

The competent authorities of both Contracting Parties shall make all reasonable efforts to resolve through mutual agreement any dispute arising from the interpretation or application of this Agreement.

Article 12

Entry into force

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. This Agreement shall enter into force on the first day of the second month following the date of the later notification by either Contracting Party, on the understanding that the Kingdom of the Netherlands shall apply Articles 4, 5, 6 and 7 provisionally from the first day of the second month following the date on which the Agreement was signed.

Article 13

Territorial application

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

Article 14

Termination

This Agreement may be terminated at any time by notification in writing to the other Contracting Party. In the event of termination, this Agreement shall remain in force until the end of the calendar year following the year in which the notification of termination was received by the other Contracting Party.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Banjul, on this 28th day of November 2005, in the English language.

For the Kingdom of the Netherlands,

JOHANNES A. VAN DER ZANDE

For the Republic of The Gambia,

ABDOU B. TOURAY

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.

F. VOORLOPIGE TOEPASSING

De artikelen 4, 5, 6 en 7 van het Verdrag worden ingevolge artikel 12, tweede lid, vanaf 1 januari 2006 voorlopig toegepast door het Koninkrijk der Nederlanden.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing alleen voor Nederland.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 12, eerste en

tweede lid, in werking treden op de eerste dag van de tweede maand na de laatste schriftelijke kennisgeving door een van beide Verdragsluitende partijen, dat hun onderscheiden wettelijke of grondwettelijke procedures zijn voltooid.

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 *achttiende* januari 2006.

De Minister van Buitenlandse Zaken,

B. R. BOT