

AGREEMENT ON SOCIAL SECURITY BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERATIVE REPUBLIC OF BRAZIL

The Republic of Austria

and

The Federative Republic of Brazil, hereinafter referred to as "Contracting States",

being desirous of regulating their relationship in the field of social security,

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Definitions

1. For the purposes of this Agreement:

- a) **"Austria"** refers to the Republic of Austria and **"Brazil"** refers to the Federative Republic of Brazil;
- b) **"legislation"** means the laws, regulations and statutory provisions made in respect to the social security systems specified in Article 2;
- c) **"national"** means, in relation to Austria, an Austrian citizen, and, in relation to Brazil, a Brazilian citizen;
- d) **"competent authority"** means,
 - in relation to Austria, the Federal Ministers responsible for the administration of the legislation of Austria, and
 - in relation to Brazil, Ministry of Labour and Social Security;
- e) **"Austrian implementing body"** means the agency, the institution, the organization or body responsible in full or in part for the implementation of the legislation specified in Article 2;
- f) **"Austrian liaison agency"** means the Federation of Social Insurances;

g) **“Brazilian competent institution”** means the agency, the institution, the organization or body responsible in full or in part for the implementation of this Agreement;

h) **“Brazilian liaison body”** means the body designed to perform the communication between the Contracting States and to ensure the compliance of applications requested under the Agreement, as well as to make the necessary clarifications to interested persons on the rights and obligations arising from it;

i) **“period of coverage”** means periods of contribution or any period treated as such insofar as it is considered equivalent to a period of coverage by the applicable legislation of each Contracting State;

j) **“benefit”** means any pension or benefit in cash, including any supplements or increases applicable under the legislation specified in Article 2.

2. The competent authorities may notify each other, in writing, of changes in the bodies designated in subparagraphs (e) to (h) of paragraph 1 without the need to modify the Agreement.

3. Any other expression used in this Agreement shall have the meaning respectively assigned to it in the applicable legislation of each Contracting State.

Article 2 **Material scope**

1. This Agreement shall apply:

(a) in relation to Austria,

(i) to the legislation concerning pension insurance, regarding benefits in the case of old age, invalidity and for survivors, with the exception of the special provisions for notaries, and

(ii) with regard to Part II only, to the legislation concerning sickness insurance and accident insurance.

(b) in relation to Brazil:

(i) to the legislation governing the general regime of social security regarding benefits for old age, death and permanent incapacity for work; and

(ii) to the specific legislation governing the regime of social security of public servants regarding benefits for old age, death and permanent incapacity for work.

2. This Agreement shall also apply to any legislation, which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1 of this Article.

Article 3

Personal scope

Unless otherwise specified, this Agreement shall apply to all persons who are or have been subject to the legislation of one or both Contracting States, as well as any person who derives rights from those persons according to the applicable legislation.

Article 4

Equality of treatment

1. Unless otherwise provided in this Agreement, nationals of the other Contracting State and their dependents and survivors shall, in the application of the legislation of one Contracting State, receive equal treatment with the nationals of this Contracting State.
2. For the purposes of this Agreement, paragraph 1 of this Article shall also apply to:
 - (a) refugees as defined in Article 1 of the Convention relating to the status of refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967, resident in the territory of one Contracting State;
 - (b) stateless persons as defined in Article 1 of the Convention relating to the status of stateless persons dated September 28, 1954, resident in the territory of one Contracting State;
 - (c) any other person who is a dependent or survivor and resides in the territory of one Contracting State with respect to his/her rights derived from the person specified in this paragraph;
 - (d) in relation to Austria, nationals of a State in which Regulation (EC) No 883/2004 applies.
3. Paragraph 1 of this Article shall not apply to the provisions of the legislation of the Contracting States concerning the insurance of persons employed at a diplomatic mission or consular post in a third State or by a member of such a mission or post.
4. Paragraph 1 of this Article shall not apply to the provisions of Austrian legislation concerning:
 - (a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
 - (b) the transfer of insurance burdens resulting from agreements with specific third States, where the Austrian nationality on specific dates in the past is relevant for the acquisition of periods of coverage under Austrian legislation for periods completed outside the territory of Austria.
5. As regards Austrian legislation concerning the crediting of periods of war service and periods considered as equivalent, Brazilian nationals who were Austrian nationals immediately before March 13, 1938, shall receive equal treatment with Austrian nationals.

Article 5

Payment of benefits abroad

1. Unless otherwise specified 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. Benefits under the legislation of one Contracting State shall be paid to nationals of the other Contracting State, who reside outside the territories of both Contracting States, under the same conditions and to the same extent as they are paid to the nationals of the first Contracting State who reside outside the territories of the Contracting States.
3. As regards Austrian legislation, paragraph 1 of this Article shall not apply to the compensatory supplement and single payments to maintain purchasing power.

PART II

PROVISIONS WHICH DETERMINE THE APPLICABLE LEGISLATION

Article 6

General provisions

1. Subject to the provisions of Articles 7 to 10, an employed or self-employed person who works in the territory of one Contracting State shall, in respect of that work, be subject only to the legislation of that Contracting State.
2. Civil servants from one of the Contracting States and persons considered as such shall be subjected to the legislation of the Contracting State the administration of which employs them.

Article 7

Posted workers

1. A person who is employed by an employer for at least one month in the territory of either Contracting State and who is posted by this employer to the territory of the other Contracting State to perform a certain work there for the same employer shall continue, in respect of that employment relationship, to be subject to the legislation of the first Contracting State as if he or she were still employed in the territory of that Contracting State, provided that the anticipated duration of the work does not exceed a period of 60 months.
2. Paragraph 1 of Article 6 shall apply if a posted person exercises an employment under an additional labour law contract with any other employer or a self-employed activity in the territory of the other Contracting State, in respect to that additional employment relationship or self-employment.

3. A person who was already subject to the provisions of paragraph 1 of this Article, for a period of 60 months, even if the period is in fractions, shall not be subject again to this Article, unless one year has elapsed since the end of the preceding posting.

Article 8

Crew members of air transportation companies

Crew members of air transportation companies who work on the territories of both Contracting States shall be subject only to the legislation of the Contracting State in which territory the company's headquarters is located. However, if this company has a subsidiary, a permanent representative or a branch in the territory of the other Contracting State, the person hired by that subsidiary, representative or branch shall be subject to the legislation of the Contracting State where the subsidiary, representative or branch is located.

Article 9

Crew members on vessels

1. A person who performs a paid activity on board a ship that flies the flag of a Contracting State shall be subject to the legislation of that Contracting State.
2. Workers employed on loading, unloading, ship repairing and port-monitoring services shall be subject to the legislation of the Contracting State where their working port is located.

Article 10

Workers of diplomatic missions and consular offices

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

Article 11

Exceptions to the provisions on applicable legislation

At the request of an employed person and his/her employer, or of a self-employed person, the competent authorities of both Contracting States may provide, by mutual consent, exceptions in the application of Articles 6 to 10, taking into account the nature and circumstances of the work.

PART III

PROVISIONS CONCERNING BENEFITS

Article 12

Calculation of benefits where totalization is not required

Where entitlement to a benefit exists under the legislation of one Contracting State without the application of paragraph 1 of Article 13, in case of Austria, the Austrian implementing body or, in case of Brazil, the Brazilian liaison body, shall determine the amount of the benefit exclusively on the basis of the periods of coverage to be taken into account under that legislation.

Article 13

Totalization of periods of coverage

1. If a person has completed periods of coverage under the legislation of both Contracting States, these periods, insofar as they do not overlap, if necessary, shall be added together for the purpose of acquiring entitlement to a benefit, as if they were periods of coverage in the Contracting State in question.
2. The periods of coverage of a person completed in a third State, with which one of the Contracting States has a social security Agreement of the same kind, shall be taken into account for the purpose of acquiring entitlement to a benefit under the legislation of only this Contracting State.
3. If the total duration of the periods of coverage to be taken into account for the determination of the benefit under the legislation of one Contracting State is less than 12 months and due to these periods of coverage entitlement to a benefit does not exist under the legislation referred to in Article 2, no benefit will be provided under the legislation of this Contracting State.

SECTION 1

BENEFITS UNDER THE LEGISLATION OF AUSTRIA

Article 14

Special provision relating to Austria

When a person who has completed periods of coverage under the legislation of both Contracting States, or the survivor of such a person, claims a benefit, the Austrian implementing body shall determine, in accordance with Austrian legislation, whether the claimant is entitled to a benefit by totalizing the periods of coverage, as provided in Article 13, and taking into account the following provisions:

- (a) Where Austrian legislation makes the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage under the legislation of Brazil completed in the same occupation or the same employment shall be taken into account for the award of such benefits.
- (b) Where Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of coverage must be completed until the

relevant date, periods during which a pension has been awarded under the legislation of Brazil shall also prolong the aforesaid reference period.

Article 15

Calculation of the Austrian benefits

1. Where entitlement to a benefit exists under Austrian legislation only by totalizing periods under paragraph 1 of Article 13, the Austrian implementing body shall determine the amount of the benefit in accordance with Regulation (EC) No. 883/2004, with periods of coverage in Brazil, to be deemed periods of coverage in another Member State of the European Union.

2. As an exception from paragraph 1 of this Article, child-raising periods shall be taken into account for the determination of the benefit only in accordance with the Austrian legislation.

SECTION 2

BENEFITS UNDER THE LEGISLATION OF BRAZIL

Article 16

Totalization of periods of coverage and calculation of the benefits

1. If a person is not eligible for a benefit considering only the periods of coverage fulfilled under the Brazilian legislation, the periods of coverage under the Austrian legislation will also be considered for the entitlement to the benefit up to the minimum period necessary to reach eligibility for the benefit. To do so, the Brazilian liaison body shall proceed as follows:

a) calculate the theoretical benefit amount that would be paid as if the totalized periods of coverage, up to the minimum period necessary to reach eligibility for the benefit, had been completed under Brazilian legislation (theoretical amount); and

b) the benefit amount shall be established based on the theoretical amount in proportion between the periods of coverage completed under the Brazilian legislation and the periods of coverage completed under the legislation of both Contracting States, up to the minimum period necessary to reach eligibility for the benefit (pro rata).

2. The theoretical amount of the benefit referred to in sub-paragraph (a) of paragraph 1 of this Article shall not, under any circumstances, be inferior to the minimum amount guaranteed by Brazilian legislation.

PART IV

MISCELLANEOUS PROVISIONS

Article 17

Cooperation and administrative assistance

1. The competent authorities of the Contracting States shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The competent authorities, the Austrian liaison agency and the Brazilian competent institution shall, within the scope of their respective authorities:
 - (a) communicate to each other information concerning the measures taken for the application of this Agreement; and
 - (b) inform each other of all changes in legislation, which affect the application of this Agreement.
3. The competent authorities and the bodies defined in paragraph 1 (e) to (h) of Article 1 shall assist each other in applying this Agreement as if they were applying their own legislation. This assistance shall be free of charge, subject to exceptions to be agreed upon between the Austrian liaison agency and the Brazilian competent institution.
4. The competent authorities and the bodies defined in paragraph 1 (e) to (h) of Article 1 may contact each other or involved persons or their legal representatives directly.
5. The competent authorities and the bodies defined in paragraph 1 (e) to (h) of Article 1 may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Contracting State.
6. If the Austrian implementing body or the Brazilian liaison body requires an applicant or beneficiary who stays or resides in the territory of the other Contracting State to undergo a medical examination, such examination shall, at the request of that body and at its expense, be arranged or carried out at the place of stay or residence by the Brazilian liaison body or the Austrian implementing body.
7. In case of medical examinations carried out under the legislation of both Contracting States, such examinations shall be arranged or carried out at the place of stay or residence by the Austrian implementing body or the Brazilian liaison body at its expense.
8. The Austrian liaison agency and the Brazilian competent institution could agree on the procedures to carry out medical examinations and for other ways of reimbursement including a waiver of the reimbursement.

Article 18

Exemption from taxes and charges

1. Any exemption from or reduction of taxes, stamp duty, legal dues or registration fees provided for in the legislation of one Contracting State in respect of certificates or documents which have to be submitted for the application of this legislation shall be extended also to

similar certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Contracting State.

2. All statements, documents and certificates of any kind required to be sent for the purposes of this Agreement shall be exempt from authentication by diplomatic or consular authorities, when they are exchanged directly between the competent authorities and/or the bodies defined in paragraph 1 (e) to (h) of Article 1.

3. Copies of documents, which are certified as true and exact copies by the competent authorities and/or the bodies defined in paragraph 1 (e) to (h) of Article 1 shall be accepted as true and exact copies, without further certification.

Article 19

Equal status of applications, notices or appeals

1. Any claim, declaration or appeal, which, for the application of this Agreement or of the legislation of a Contracting State, is submitted to the competent authority for the application of Article 11 or the Austrian implementing body or the Brazilian liaison body for all other cases, shall be considered as a claim, declaration or appeal submitted to the corresponding body of the other Contracting State.

2. A claim for benefits made under the legislation of one Contracting State shall also be valid as a claim for a corresponding benefit according to the legislation of the other Contracting State provided that at the time of application information is provided indicating that periods of coverage have been completed under the legislation of the other Contracting State. This shall not apply, however, when the claimant expressly requests that the granting of an old age benefit under the legislation of the other Contracting State should be suspended.

3. Any claim, declaration or appeal, which, under the legislation of one Contracting State, must be submitted within a specified time to the Austrian implementing body or the Brazilian liaison body, may be submitted within the same time to the corresponding body of the other Contracting State.

4. In the cases to which paragraphs 1 to 3 of this Article apply, the competent authority or the Austrian implementing body or the Brazilian liaison body to which the submission is made shall forward the claim, declaration or appeal without delay to the corresponding body of the other Contracting State, indicating the date of receipt of the document.

Article 20

Payments

1. Payment of benefits under this Agreement may be made in the currency of either Contracting State.

2. Reimbursements according to this Agreement shall be made in the currency of the Contracting State in which the service has been carried out.

3. Payments according to this Agreement shall be carried out in accordance with the rules or practices, which are in force in this field in each one of the Contracting States at the time of payment.

4. In the event that a Contracting State imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting State, the Contracting State shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting State.

Article 21

Data Protection

1. Insofar as personal data are communicated pursuant to this Agreement and in conformity with national law, the following provisions shall apply taking into consideration other binding provisions of the respective Contracting States:

(a) For the implementation of this Agreement and the legislation referring thereto, personal data may be communicated to the responsible bodies of the receiving State. The respective receiving bodies shall not use these data for other purposes. Onward transmission of personal data within the territory of the receiving State to other bodies is admissible in conformity with the national law of the receiving State insofar as it serves social security purposes including related court procedures.

(b) Any personal data communicated in whatever form between the responsible authorities, institutions and other bodies concerned pursuant to this Agreement or to any arrangement implementing this Agreement are treated as confidential information received from the other Contracting State in the same manner as information obtained under the national law of the receiving State. These obligations shall apply to all persons fulfilling tasks under this Agreement and also to persons bound themselves by the obligation of secrecy.

(c) In specific cases the receiving body shall give information upon request of the communicating body about both the use of the data received and the results, which had been achieved by this data.

(d) The communicating body shall guarantee that the personal data communicated are accurate and up-to-date. Before initiating any communication of personal data the communicating body has to examine whether or not the communication is necessary and proportionate with regard to the purpose of the communication in question. This is to be done with due consideration to prohibitions on communication existing in the relevant national laws. In the case of communication of inaccurate data or data which should not have been communicated under the national law of the communicating State, the receiving body must be informed thereof without undue delay. The latter shall carry out the necessary elimination or correction of the data immediately. If the receiving body has reason to suppose that communicated data might be inaccurate or should be eliminated, this body shall immediately inform the communicating body thereof.

(e) Every person concerned, who proves his identity in an appropriate manner, shall be provided by the body responsible for the data processing with information about the data relating to him which have been communicated or processed, about their origin, the recipients or categories of recipients of communications, the purpose of the use of data as well as its legal basis in an understandable form. The information shall be given without undue delay and - in principle - free of charge. Moreover the person concerned shall have the right to correction of incomplete or inaccurate data and to elimination of unlawfully processed data. Further procedural details relating to the enforcement of these rights are subject to national law.

(f) In the event of breach of rights related to data protection, the affected persons shall be entitled to legal remedy, including in a court of law, in accordance with the respective national law of the Contracting States.

(g) Personal data communicated shall be eliminated

- if found to be inaccurate, or unlawfully obtained or communicated, or
- if lawfully communicated data have to be eliminated at a later date pursuant to the national law of the communicating State, or
- if data are no longer needed for the fulfilment of the task and if there is no reason to suppose that the elimination could endanger a person's interests deserving protection in the field of social security.

(h) Both the communicating body and the receiving body shall be obliged to register purpose, subject and date of any communication of personal data.

(i) Both the communicating body and the receiving body shall be obliged to effectively protect the received personal data against accidental or unauthorized destruction, accidental loss, unauthorized access, unauthorized or accidental modification and unauthorized disclosure.

2. The provisions of paragraph 1 of this Article shall apply accordingly to trade and business secrets.

Article 22

Undue payments

Where the Austrian implementing body or the Brazilian liaison body has made an undue payment of a benefit, the amount of the undue payment may be deducted from the arrears of a corresponding benefit payable under the legislation of the other Contracting State to the account of the Austrian implementing body or the Brazilian competent institution.

Article 23

Settlements of Disputes

The divergences resulting of the application or interpretation of this Agreement shall be resolved through consultations between the competent authorities of the Contracting States.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 24

Transitional provisions

1. This Agreement shall not establish any entitlement to payment of a benefit for any period before the date of entry into force of this Agreement.
2. Any period of coverage completed under the legislation of a Contracting State before the entry into force of this Agreement shall also be taken into consideration for the determination of rights acquired under this Agreement.
3. Subject to paragraph 1 of this Article, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not given rise to lump-sum payments.
4. The amount of a benefit due only by virtue of this Agreement shall be determined from the date of entry into force of this Agreement at the request of the beneficiary. Where the claim is submitted within two years from the entry into force of this Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Contracting State.
5. Benefits granted before the entry into force of this Agreement shall not be reviewed.
6. In applying paragraph 1 of Article 7, in case of persons who were posted to a Contracting State prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on the date of entry into force of this Agreement.

Article 25

Entry into force, period of duration and termination

1. This Agreement shall enter into force on the first day of the third month following the month in which each Contracting State receives from the other Contracting State written notification that it has complied with all requirements for the entry into force of this Agreement.
2. This Agreement shall remain in force for an indefinite period. Either Contracting State may terminate it in writing, with twelve months previous notice.

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

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

DONE at Brasília, on 17 May 2022, in two originals, in German, Portuguese and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF AUSTRIA

FOR THE FEDERATIVE REPUBLIC OF
BRAZIL

Stefan Scholz m.p.

José Carlos Oliveira m.p.