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CHAMBRE DES DEPUTES

Session ordinaire 2018-2019

PROJET DE LOI

**portant approbation de la Convention de sécurité sociale
entre le Gouvernement du Grand-Duché de Luxembourg
et le Gouvernement de la République de Corée, faite à
Luxembourg, le 1er mars 2018**

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**DEPECHE DU MINISTRE AUX RELATIONS AVEC LE PARLEMENT
AU PRESIDENT DE LA CHAMBRE DES DEPUTES**

(15.11.2018)

Monsieur le Président,

À la demande du Ministre des Affaires étrangères et européennes et en complément au dépôt du projet de loi repris sous rubrique du 10 octobre 2018, j'ai l'honneur de vous faire parvenir en annexe la version anglaise de la Convention de sécurité sociale entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République de Corée, faite à Luxembourg, le 1^{er} mars 2018.

En effet, dans sa lettre du 5 novembre 2018 à l'adresse de Monsieur le Premier Ministre, Ministre d'État, Monsieur le Président du Conseil d'État avait signalé que la convention à approuver a été établie en trois langues, à savoir en français, coréen et anglais, et qu'« en cas de divergence d'interprétation, le texte anglais prévaut. ».

Dès lors, il y aura lieu de veiller à ce que la version anglaise, jointe à la présente, soit également soumise pour approbation à la Chambre des Députés et publiée par la suite au Journal officiel pour être opposable au public.

Veillez agréer, Monsieur le Président, l'assurance de ma haute considération.

*Le Ministre aux Relations
avec le Parlement,
Fernand ETGEN*

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AGREEMENT ON SOCIAL SECURITY
between the Government of the Grand Duchy of Luxembourg
and the Government of the Republic of Korea

The Government of the Grand Duchy of Luxembourg

and

the Government of the Republic of Korea

(hereinafter referred to as the „Contracting Parties“),

Being desirous of regulating the relationship between their two countries 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) „National“ means:
 - (i) as regards the Grand Duchy of Luxembourg (hereinafter referred to as „Luxembourg“), a national of Luxembourg, and
 - (ii) as regards the Republic of Korea (hereinafter referred to as „Korea“), a national of Korea as defined in the Nationality Law;
 - (b) „Legislation“ means the laws and regulations specified in Article 2 of this Agreement;
 - (c) „Competent Authority“ means the Ministries in charge of enforcing the legislation mentioned in Article 2 of this Agreement;
 - (d) „Competent Institution“ means:
 - (i) as regards Luxembourg, the institution, body or authority responsible for applying all or part of the legislation specified in paragraph 1(a) of Article 2, and
 - (ii) as regards Korea, the National Pension Service;
 - (e) „Period of coverage“ means any period of contributions that has been recognized and completed under the legislation of a Contracting Party, and any other period recognized as equivalent to a period of contribution under that legislation;
 - (f) „Benefit“ means any pension or benefit in cash, including any supplements or increases, provided for in the legislation specified in Article 2 of this Agreement.
2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation.

Article 2

Applicable Legislation

1. This Agreement shall apply to the following legislation:
 - (a) as regards Luxembourg,
 - (i) pension insurance in case of old-age, invalidity and survivorship,

- (ii) Articles 2 and 173 of the Social Security Code for the purpose of Article 8, and
 - (iii) with regard to Part II only, sickness and maternity insurance, accidents at work and occupational diseases insurance, unemployment benefits and family benefits.
 - (b) as regards Korea,
 - (i) the National Pension Act, and
 - (ii) with regard to Part II only, the Employment Insurance Act, the National Health Insurance Act and the Industrial Accident Compensation Insurance Act.
2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third State, or legislation promulgated for their specific implementation.
3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article.
4. Notwithstanding paragraph 3 of this Article, this Agreement shall not apply to the laws or regulations which extend existing legislation of one Contracting Party to new categories of beneficiaries, if the Competent Authority of that Contracting Party notifies the Competent Authority of the other Contracting Party in writing, within six months from the date of the entry into force of such laws or regulations, that no such extension to the Agreement is intended.
5. This Agreement shall neither apply to social assistance, nor to benefits for victims of war.

Article 3

Personal Scope

This Agreement shall apply to any person who is or who has been subject to the legislation of either Contracting Party, and to the dependents and survivors of such a person within the meaning of the applicable legislation of either Contracting Party.

Article 4

Equal Treatment

Unless otherwise provided in this Agreement, any person described in Article 3 who resides in the territory of either Contracting Party, shall, in the application of the legislation of the Contracting Party, receive equal treatment with nationals of that Contracting Party. The foregoing shall also apply to the dependents and survivors who reside in the territory of either Contracting Party with respect to their rights derived from the persons specified in this Article.

Article 5

Export of Benefits

1. Benefits under the legislation of one Contracting Party shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides or stays in the territory of the other Contracting Party, and the benefits shall be payable in the territory of the other Contracting Party.
2. Benefits under the legislation of one Contracting Party shall be granted to the beneficiaries of the other Contracting Party who reside outside the territories of the Contracting Parties under the same conditions as they are granted to the nationals of the first Contracting Party who reside outside the territories of the Contracting Parties.

*Article 6****Reduction or Suspension Clauses***

The reduction or suspension clauses provided for in the legislation of one Contracting Party, in case one benefit coincides with other social security benefits or with other professional income, shall be applied to the beneficiaries, even if these benefits were acquired by virtue of a scheme of the other Contracting Party, or if the related professional activities are exercised in the territory of the other Contracting Party.

*Article 7****Extension of the Reference Period***

If the legislation of one Contracting Party makes the entitlement to benefits conditional upon the completion of a minimum insurance period during a specified period preceding the insured contingency (reference period), and if that legislation stipulates that certain facts or circumstances shall extend this reference period, those facts and circumstances have the same effect when they occur in the territory of the other Contracting Party.

*Article 8****Admission to Optional Continued Insurance***

1. The provisions of the legislation of a Contracting Party which make the admission to optional continued insurance conditional upon residence in the territory of that Contracting Party shall not apply to persons residing in the territory of the other Contracting Party, provided that at some time in their past working life they were as a worker subject to the legislation of the first Contracting Party.
2. Where, under the legislation of a Contracting Party, admission to optional continued insurance is conditional upon completion of insurance periods, the insurance periods completed under the legislation of the other Contracting Party shall be taken into account, to the extent necessary, as if they were completed under the legislation of the first Contracting Party.

PART II

Provisions on Coverage*Article 9****General Provisions***

Except as otherwise provided in this Part, an employed or self-employed person who works in the territory of one Contracting Party shall, with respect to that work, be subject only to the legislation of that Contracting Party.

*Article 10****Detached Workers***

1. Where a person in the service of an employer having a registered office in the territory of one Contracting Party is sent by that employer to work on that employer's behalf in the territory of the other Contracting Party, only the legislation on compulsory coverage of the first Contracting Party shall continue to apply with regard to that employment during the first sixty calendar months as though the employee were still employed in the territory of the first Contracting Party. This paragraph shall also apply to an employee who has been sent by his or her employer in the territory of one Contracting Party to the employer's affiliated or subsidiary company in the territory of the other Contracting Party.

2. In case the detachment continues beyond the period specified in paragraph 1 of this Article, the legislation of the first Contracting Party referred to in that paragraph shall continue to apply, provided that the Competent Authorities of both Contracting Parties or the Competent Institutions designated by them consent upon the joint request of the employee and the employer.

Article 11

Self-Employed Persons

1. A self-employed person who ordinarily resides in the territory of a Contracting Party and who works in the territory of the other Contracting Party or in the territories of both Contracting Parties shall, in respect of that work, be subject only to the legislation of the first Contracting Party during the first sixty calendar months.
2. A person who is employed in the territories of both Contracting Parties or self-employed in the territory of a Contracting Party and employed in the territory of the other Contracting Party shall be subject only to the legislation of the Contracting Party in whose territory he or she ordinarily resides during the first sixty calendar months.
3. In case the self-employed activity continues beyond the period specified in paragraphs 1 and 2 of this Article, the legislation of the first Contracting Party referred to in those paragraphs shall continue to apply, provided that the Competent Authorities of both Contracting Parties or the Competent Institutions designated by them consent upon the request of the self-employed person.

Article 12

Mariners and Aircraft Crew

1. A person who, but for this Agreement, would be subject to the legislation of both Contracting Parties with respect to employment as an officer or member of a crew on a ship shall be subject only to the legislation of the Contracting Party in the territory of which the person ordinarily resides.
2. A person who is employed as an officer or member of the crew of an aircraft shall, in respect of that employment, be subject to the legislation of the Contracting Party in the territory of which the enterprise by which he or she is employed has its head office. If, however, the enterprise has a branch or permanent presence in the territory of the other Contracting Party, such a person employed by that branch or permanent presence and who is not subject to Article 10 shall be subject to the legislation of the Contracting Party in the territory of which the branch or permanent presence is located.

Article 13

Members of Diplomatic Missions and Consular Posts, and Civil Servants

1. Nothing in this Agreement shall 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.
2. Subject to paragraph 1 of this Article, a person employed by the central or local government service, or any other public service of a Contracting Party, who is sent to work in the territory of the other Contracting Party, shall be subject to the legislation of the first Contracting Party as if he or she were employed in its territory.

Article 14

Exceptions to Articles 9 to 13

The Competent Authorities of the two Contracting Parties or the Competent Institutions designated by them may agree to grant an exception to Articles 9 to 13 with respect to particular persons or cate-

gories of persons, provided that any affected person shall be subject to the legislation of one Contracting Party.

PART III

Provisions on Benefits

Section I – Common Provisions on Benefits

Article 15

Totalization of Periods of Coverage

1. When periods of coverage have been completed under the legislation of the two Contracting Parties, the Competent Institution of each Contracting Party shall, in determining eligibility for benefits under the legislation which it applies, take into account, if necessary, periods of coverage under the legislation of the other Contracting Party, provided that such periods of coverage do not overlap with periods of coverage under its legislation.
2. If the legislation of one Contracting Party subordinates the granting of certain benefits to the condition that the periods of coverage are to be completed in a given occupation, only periods of coverage completed or recognized as equivalent in the same occupation under the legislation of the other Contracting Party shall be totalized for admission to entitlement to these benefits.
3. If a person is not entitled to a benefit on basis of the periods of coverage completed under the legislation of both Contracting Parties, totalized according to paragraphs 1 and 2 of this Article, the right to the said benefit is to be determined by totalizing those periods with the periods of coverage completed under the legislation of a third State, with whom both Contracting Parties are bound by social security instruments which provide for the totalization of periods of coverage, provided that such periods of coverage do not overlap with periods of coverage under the legislation of both Contracting Parties.

Article 16

Calculation of Pensions

The calculation of the pension shall be determined by the applicable legislation of the respective Contracting Party unless otherwise provided in this Agreement.

Section II – Special Provisions relating to Luxembourg

Article 17

Calculation of Benefits

1. If a person is entitled to a benefit under the legislation of Luxembourg without applying Article 15 of this Agreement, the Competent Institution of Luxembourg shall calculate, according to the legislation it applies, the benefit on the basis of the total periods of coverage to be taken account of by virtue of that legislation.
2. The Competent Institution shall also calculate the amount of the benefit that would be obtained by applying the rules specified in paragraph 3 of this Article. Only the higher of these two amounts shall be taken into consideration.
3. If a person is entitled to a benefit only by taking into account periods of coverage totalized pursuant to Article 15 of this Agreement, the following rules shall apply:
 - (a) the Competent Institution shall calculate the theoretical amount of the benefit due as if all the periods of coverage completed under the legislation of both Contracting Parties were exclusively completed under the legislation of Luxembourg;

- (b) for determining the theoretical amount referred to under sub-paragraph (a), the calculation basis is to be established by reference only to those periods of coverage completed under the legislation of Luxembourg;
- (c) the Competent Institution shall then calculate the amount due, on the basis of the amount specified under sub-paragraph (a), in proportion to the periods of coverage completed under the legislation of Luxembourg, in relation to the total periods of coverage completed under the legislation of both Contracting Parties.

4. Where the conditions required for the entitlement to a benefit are satisfied only after the application of paragraph 3 of Article 15, the periods of coverage completed under the legislation of the third State referred to in that paragraph shall be considered for the application of paragraph 3 of this Article.

Article 18

Particular Provision of Luxembourg Legislation (baby-years)

When calculating a pension, the provisions of Article 15 of this Agreement shall apply for the acknowledgement of the baby-years provided for under the legislation of Luxembourg, under the condition that the person concerned last completed periods of coverage under the legislation of Luxembourg before the birth or adoption of the child.

Section III – Special Provisions relating to Korea

Article 19

Benefits under the Legislation of Korea

1. Where periods of coverage under the legislation of Luxembourg are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 1 of Article 15, the benefits due shall be determined as follows:

- (a) the Competent Institution of Korea shall first compute a pension amount equal to the amount that would have been payable to the person if all the periods of coverage taken into account under the legislation of the two Contracting Parties had been completed under the legislation of Korea. To determine the pension amount, the Competent Institution of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea;
- (b) the Competent Institution of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding sub-paragraph, in proportion to the ratio between the duration of the periods of coverage taken into consideration under its own legislation and the total duration of the periods of coverage taken into consideration under the legislation of the two Contracting Parties.

2. Lump-sum refunds shall be granted to nationals of the other Contracting Party under the same conditions as they are granted to Korean nationals. Notwithstanding Articles 4 and 5 of this Agreement, lump-sum refunds shall be paid to nationals of a third State only in accordance with the legislation of Korea.

3. Where the conditions required for the entitlement to a benefit are satisfied only after application of paragraph 3 of Article 15, the periods of coverage completed under the legislation of the third State referred to in that paragraph shall be considered for the application of paragraph 1 of this Article.

PART IV

Miscellaneous Provisions*Article 20****Administrative Arrangement***

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

*Article 21****Exchange of Information and Mutual Assistance***

1. The Competent Authorities and Institutions of the Contracting Parties shall, within the scope of their respective competence:
 - (a) communicate to each other, to the extent permitted by the legislation which they administer, any information necessary for the application of this Agreement;
 - (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies; and
 - (c) communicate to each other, as soon as possible, the information concerning the measures taken by them for the application of this Agreement and any changes in their respective legislation which may affect the application of this Agreement.
2. The assistance referred to in sub-paragraph 1(b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 20.

*Article 22****Confidentiality of Information***

Unless otherwise required by the national laws and regulations of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or Institution of that Contracting Party by the Competent Authority or Institution of the other Contracting Party shall be used exclusively for the purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority or Institution of a Contracting Party shall be governed by the national laws and regulations of that Contracting Party for the protection of the privacy and confidentiality of personal data.

*Article 23****Exemption from Fees and Certification of Documents***

1. Where the legislation of a Contracting Party provides that any document which is submitted to the Competent Authority or Institution of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Institution of the other Contracting Party in the application of this Agreement or of the legislation of the other Contracting Party.
2. Documents and certificates which are presented by the Competent Authority or Institution of either Contracting Party for the application of this Agreement or of the legislation of the other Contracting

Party shall be exempted from the requirements for authentication by diplomatic or consular authorities or any other similar formalities.

3. Copies of documents which are certified as true and exact copies by the Competent Authority or Institution of one Contracting Party shall be accepted as true and exact copies by the Competent Authority or Institution of the other Contracting Party, without further certification.

Article 24

Language of Communication

1. The Competent Authorities and Institutions of the Contracting Parties may correspond directly with one another as well as with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or of the legislation to which this Agreement applies. The correspondence may be made in any official language of either Contracting Party or in the English language.

2. An application or document may not be rejected by a Competent Authority or Institution of a Contracting Party solely because it is in an official language of the other Contracting Party.

Article 25

Submission of Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been filed within a prescribed period with the Competent Authority or Institution of that Contracting Party, but which is instead filed within the same period to the Competent Authority or Institution of the other Contracting Party, shall be considered to have been filed on time with the Competent Authority or Institution of the first Contracting Party.

2. If, after the entry into force of this Agreement, a person files a written application for benefits with the Competent Institution of a Contracting Party under the legislation of that Contracting Party, and if that person has not explicitly requested that the application be restricted to benefits under that legislation, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:

- (a) is entitled on age grounds to lodge a valid claim for a benefit of the other Contracting Party; and
- (b) requests that it be considered as an application under the legislation of the other Contracting Party; or
- (c) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party.

However, the foregoing shall not apply if the applicant explicitly requests that the application be restricted to benefits under the legislation of the first Contracting Party.

3. In any case to which paragraph 1 or 2 of this Article applies, the Competent Authority or Institution to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and forward it without delay to the Competent Authority or Institution of the other Contracting Party.

Article 26

Payment of Benefits

1. The Competent Institution of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.

2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittances or transfers of funds or financial instruments to persons who are outside the territory of that Contracting Party, it 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.

Article 27

Resolution of Disagreements

Any disagreement regarding the application of this Agreement shall be resolved by consultation between the Competent Authorities.

PART V

Transitional and Final Provisions

Article 28

Transitional Provisions

1. Any period of coverage completed before the date of entry into force of this Agreement, and any other relevant events that occurred before that date, shall be taken into consideration in determining the right to a benefit under this Agreement. However, the Competent Institution of neither Contracting Party shall be required to take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its legislation.
2. This Agreement shall not establish any right to receive payment of a benefit for any period before the date of the entry into force of this Agreement.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
4. Benefits determined before the entry into force of this Agreement may be newly determined upon application if a change in such benefits results solely from the provisions of this Agreement. If the new determination under the preceding sentence of this paragraph results in no entitlement or entitlement to a lesser amount of pension than paid for the last period prior to the entry into force of this Agreement, the same amount of pension as previously paid shall continue to be paid.
5. In applying Article 10 in case of persons who were sent to a Contracting Party 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.
6. The provisions of Part III shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

Article 29

Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which each Contracting Party has received from the other Contracting Party written notification that it has complied with all requirements for the entry into force of this Agreement.

Article 30

Period of Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which written notice of its termination is given by either Contracting Party to the other Contracting Party.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting Parties shall make arrangements dealing with rights in the process of being acquired.

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

DONE in duplicate at Luxembourg, on 1st of March 2018, in the French, Korean and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

*For the Government of the
Grand Duchy of Luxembourg*

Romain SCHNEIDER

Minister of Social Security

*For the Government of the
Republic of Korea*

Kim Hyoung-zhin

*Ambassador of the
Republic of Korea to the
Grand Duchy of Luxembourg*

