

No. 2373

BELGIUM
and
SWITZERLAND

Convention respecting social insurance (with general protocol). Signed at Berne, on 17 June 1952

Official text: French.

Registered by Belgium on 19 November 1953.

BELGIQUE
et
SUISSE

Convention en matière d'assurances sociales (avec protocole général). Signée à Berne, le 17 juin 1952

Texte officiel français.

Enregistrée par la Belgique le 19 novembre 1953.

[TRANSLATION¹ — TRADUCTION²]

No. 2373. CONVENTION³ BETWEEN BELGIUM AND SWITZERLAND RESPECTING SOCIAL INSURANCE. SIGNED AT BERNE, ON 17 JUNE 1952

His Majesty the King of the Belgians

and

The Swiss Federal Council,

Being desirous of affording the nationals of their two countries, so far as possible, the benefit of Belgian and Swiss legislation with regard to social insurance,

Have decided to conclude a Convention and, to that end, have appointed as their plenipotentiaries,

His Majesty the King of the Belgians :

Mr. Gérard VAN DEN DAELE, Minister of Labour and Social Insurance,

Mr. Etienne CHAMPENOIS, Acting Chargé d'Affaires of Belgium,

The Swiss Federal Council :

Mr. Arnold SAXER, Director of the Federal Bureau of Social Insurance at Berne,

Who, having exchanged their full powers, and found them to be in good and due form, have agreed upon the following provisions :

TITLE I. SCOPE

Article 1

(1) The legislation to which this Convention applies is as follows :

(a) in Belgium :

1. the general legislation concerning insurance against old age and premature death;
2. the legislation concerning salaried employees' insurance against old age and premature death;

¹ Translation by the International Labour Office.

² Traduction du Bureau international du Travail.

³ Came into force on 1 November 1953, in accordance with article 17, the exchange of the instruments of ratification having taken place at Brussels on 25 September 1953. These instruments are not applicable to the territories of the Belgian Congo and Ruanda-Urundi.

3. the legislation concerning the pension scheme for mineworkers and other persons treated as such;
4. the legislation concerning industrial accidents and occupational diseases;

(b) in Switzerland :

1. the federal legislation on old-age and survivors' insurance;
2. the federal legislation on insurance against industrial accidents and occupational diseases.

(2) This Convention shall also apply to all Acts or regulations consolidating, amending or supplementing the legislation listed in section (1) of this article.

(3) This Convention shall apply to any Acts or regulations which may extend the existing schemes to fresh categories of persons, unless one or other of the contracting Parties makes an objection within three months following the official communication of the said enactments under section (1) of article 11 of this Convention.

TITLE II. GENERAL PROVISIONS

Article 2

Subject to the reserves and special rules prescribed in this Convention and in the Protocol annexed thereto, nationals of each contracting Party shall enjoy the benefits of the legislation of the other Party under the same conditions as the nationals of the latter.

Article 3

(1) Subject to the provisions of sections (2) and (3) of this article and of articles 4 and 5, employed persons who are nationals of either contracting Party and are employed on the territory of one Party shall be subject to the legislation of that Party, even if they normally reside on the territory of the other Party or their employer or the principal place of business of the undertaking employing them is on the territory of the latter Party.

(2) Nationals of either Party who are normally resident on the territory of one Party and are employed on the territory of the other by an undertaking which has on the territory of the first Party an establishment to which they are attached shall be subject to the legislation of that Party, as if they were employed on its territory, in so far as the probable duration of their employment on the territory of the other Party does not exceed 12 months; if the said employment is prolonged for unforeseen reasons beyond 12 months, the legislation

of the first Party shall continue to be applied for a further period not exceeding 12 months, on the condition that the competent authorities of the other Party have given their assent before the completion of the first period of 12 months.

(3) (a) Nationals of either Party employed as travelling personnel of railway and road transport undertakings on the territory of either Party shall be subject to the legislation of the Party where the transport undertaking has its principal place of business.

(b) The same rule shall apply to nationals of either Party employed on board aircraft, unless the said nationals are paid by a branch office or permanent agency established on the territory of the other country; in this case the legislation of the last-mentioned country shall apply.

Article 4

The provisions of section (1) of article 3 shall apply to all employed persons and persons treated as such, regardless of nationality, who are employed in Belgian or Swiss diplomatic or consular missions or who are in the personal employ of such diplomatic or consular representatives :

Provided that—

1. diplomatic and consular officers *de carrière*, including officers on the staff of chancelleries, shall be excepted from the operation of this article;
2. employed persons and persons treated as such who are nationals of the country represented by the diplomatic or consular mission and who are not permanently established in the country where they are employed shall be subject to the legislation of their country of origin unless they expressly ask to be subject to the legislation of the country where they are employed.

Article 5

The competent authorities of the two contracting Parties may by mutual agreement prescribe exceptions to the provisions of articles 3 and 4, in certain special cases.

TITLE III. DETAILED PROVISIONS

CHAPTER I. OLD AGE AND DEATH (PENSIONS)

Article 6

(1) Belgian nationals who are or have been covered by Swiss old-age and survivors' insurance shall be entitled to the ordinary pensions from the said insurance on the same conditions as Swiss nationals if, at the time when the event insured against occurs, they—

- (a) have paid Swiss old-age and survivors' insurance contributions for a total of five complete years or more; or
- (b) have lived in Switzerland for a total of ten years or more (including five years of uninterrupted residence immediately before the occurrence of the event insured against) and during the said period have paid old-age and survivors' insurance contributions for a total of one complete year or more.

(2) On the death of a Belgian national fulfilling the conditions laid down in section (1) (a) and (b), the survivors shall be entitled to the ordinary pensions from Swiss old-age and survivors' insurance.

(3) Article 40 of the Swiss Federal Old-Age and Survivors' Insurance Act, respecting the reduction of pensions, shall not apply to Belgian nationals.

(4) Belgian nationals not fulfilling the conditions prescribed in section (1) (a) or (b) or the survivors of such persons shall be entitled to repayment of the insured person's and employer's contributions. Belgian nationals shall in this event be entitled to demand that the said contributions be transferred to Belgium and utilized in a manner to be prescribed by Royal Order to secure the rights which they would have acquired if the said contributions had been paid under the Belgian legislation mentioned in items 1, 2 or 3 of article 1 (1) (b).

Belgian nationals who have obtained repayment of contributions shall have no further claim under Swiss insurance.

Article 7

The interim pensions prescribed in Swiss legislation on old-age and survivors' insurance shall be granted, on the conditions prescribed for Swiss nationals, to Belgian nationals who have been resident in Switzerland for ten years or more during the 15 years immediately preceding the occurrence of the event insured against.

Article 8

Swiss nationals and their survivors shall be entitled to all the forms of benefit prescribed in the Belgian legislation mentioned in items 1, 2 and 3 of article 1 (1) (b), on the same conditions as Belgian nationals.

Article 9

Nationals of either contracting Party who are in receipt of benefit under the legislation of one Party shall receive the benefit in full during any residence on the territory of the other Party, subject to the following reserves :

1. the residence conditions prescribed by the Belgian legislation shall be enforceable—
 - (a) on Belgian nationals, where the benefit applied for is subject to a condition as to need;
 - (b) on Belgian and Swiss nationals in the case of benefits awardable when the event insured against occurred before 1 January 1945;
2. The interim pensions mentioned in article 7 shall cease to be payable to beneficiaries of Belgian nationality when they leave Swiss territory.

CHAPTER II. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 10

Nationals of either contracting Party who could claim benefit under the industrial accident and occupational disease legislation of one Party if they were resident on the territory of that Party shall retain such right and receive such benefit during the whole of any period when they are on the territory of the other Party.

The term "benefit" includes the supplementary or cost-of-living allowances granted to certain categories of recipients of pensions, unless the said allowances are, under the legislation, subject to a condition as to need.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 11

- (1) The supreme administrative authorities shall—
 - (a) make all the necessary administrative arrangements for the application of this Convention (they may, *inter alia*, agree to appoint a centralizing institution in each country for the purpose of facilitating relations between the insurance institutions of the two countries);

- (b) inform each other fully of all measures taken for the application of this Convention;
 - (c) inform each other as soon as possible of all amendments of their legislation.
- (2) The following shall be the supreme administrative authorities for the purposes of this Convention :
- (a) *in Belgium* :
the Minister responsible for administering the legislation mentioned in article 1 (1) (a);
 - (b) *in Switzerland* :
the Federal Social Insurance Office.

Article 12

- (1) For the purposes of this Convention the competent authorities and institutions of the two contracting Parties shall afford each other mutual assistance to the same extent as they would in the application of their own legislation.
- (2) The supreme administrative authorities shall by mutual agreement prescribe the method of medical and administrative supervision of persons in receipt of benefit under this Convention.
- (3) The supreme administrative authorities of the two contracting Parties shall afford each other mutual assistance in the administration of Belgian and Swiss voluntary insurance (free or continued) to nationals of either country resident on their respective territories.

Article 13

- (1) The privilege of exemption from or reduction of dues, stamp charges and fees under the legislation of one contracting Party in respect of the records or documents to be produced under the legislation of the said Party shall be extended to the records and documents to be produced under the legislation of the other Party.
- (2) The competent authority or institution of either contracting Party shall not demand legalization by the diplomatic or consular authorities of any documents, certificates or papers to be submitted to such authority or institution for the purposes of this Convention.

Article 14

Claims, declarations or appeals which are required to be lodged within a fixed time with an institution of one of the contracting Parties shall be deemed to have been validly made if they are lodged within the same time with a corres-

pending institution of the other Party. In such cases the latter institution shall without delay transmit the said claims, declarations or appeals to the competent institution of the first-mentioned Party.

Article 15

(1) The institutions liable for social insurance benefits under this Convention shall be held to discharge their obligations validly by making payment in the currency of their country.

(2) The transfers arising out of the application of this Convention shall be effected in accordance with the relevant agreements in force between the two contracting Parties at the time of the transfer.

(3) In the event of regulations being made by either contracting Party to impose restrictions on currency exchanges, measures shall be taken forthwith by agreement between the two governments, to ensure, in accordance with the provisions of this Convention, the reciprocal transfer of sums due.

Article 16

(1) All difficulties respecting the interpretation or application of this Convention shall be resolved by agreement between the supreme administrative authorities of the two contracting Parties.

(2) If it is impossible to find a solution in this manner within three months, the dispute shall be submitted for arbitration to a body whose composition shall be decided by agreement between the contracting Parties; the procedure to be followed shall be decided in like manner.

If no agreement can be reached on this point within a further period of three months, the dispute shall be submitted by either Party to an arbitrator designated by the president of the International Court of Justice.

The decision of the arbitration body or of the arbitrator shall be made in accordance with the fundamental principles and spirit of this Convention; it shall be binding and without appeal.

TITLE V. FINAL AND TRANSITIONAL PROVISIONS

Article 17

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged in Brussels as soon as possible.

(2) This Convention shall come into force on the first day of the month following that in which the exchange of ratifications takes place.

Article 18

(1) This Convention is concluded for one year. It shall continue in force from year to year unless it is denounced by one of the contracting Parties three months before the expiration of the current period.

(2) In the event of denunciation of this Convention, every right already acquired by a person under its provisions shall be maintained. Agreements shall be made regarding the determination of rights in process of acquisition under the provisions of this Convention.

Article 19

(1) The provisions of this Convention shall likewise apply in cases where the event insured against occurred prior to the date of the coming into force of the Convention. No benefit based on the provisions of this Convention shall be granted in respect of the period preceding its coming into force. Article 6 (4) shall likewise apply in relation to contributions paid prior to the coming into force of this Convention.

(2) Where payment of benefits had been suspended under the law in force in one of the contracting countries by reason of the fact that the persons concerned were residing abroad, such benefits shall be paid as from the first day of the month following the coming into force of this Convention. Benefits which for the same reason could not be awarded to the persons concerned shall be assessed and paid as from the same date.

(3) This article shall not apply in relation to Belgian benefits unless the claims are made within one year of the date of the coming into force of this Convention.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE in duplicate, at Berne, 17 June 1952.

For Belgium :

(Signed) G. VAN DEN DAELE

(Signed) E. CHAMPENOIS

For Switzerland :

(Signed) A. SAXER

GENERAL PROTOCOL¹ RELATING TO THE CONVENTION BETWEEN BELGIUM AND SWITZERLAND RESPECTING SOCIAL INSURANCE

On signing this day the Convention between Belgium and Switzerland, the plenipotentiaries of each of the contracting Parties have agreed upon the following statements :

1. We have found—

- (a) that the Belgian legislation contains no provision involving discrimination between Belgian and Swiss nationals with respect to rights and obligations under the legislation (not covered by the Convention of this day's date) on social insurance (sickness, maternity, invalidity and funeral grant), on family benefits and on allowances for the unemployed;
- (b) that the Swiss federal legislation contains no provision involving discrimination between Belgian and Swiss nationals with respect to rights and obligations under the legislation (not covered by the Convention of this day's date) on sickness insurance, unemployment insurance, tuberculosis insurance and family allowances for agricultural workers and mountain peasants.

The Belgian and Swiss Governments agree to maintain to the utmost extent possible this absence of discrimination in the whole body of social security legislation.

2. Since insurance against non-industrial accidents is governed in Switzerland by the same statutory provisions as insurance against industrial accidents and insurance against occupational disease, it is understood that the benefits payable in respect of insurance against non-industrial accidents (including cost-of-living allowances) shall be paid to a beneficiary when he is in the territory of either of the two contracting Parties; the restriction contained in article 90 of the Federal Act of 13 June 1911 respecting sickness and accident insurance is lifted.

Since insurance against non-industrial accidents is governed in Belgium by the legislation on compulsory sickness and invalidity insurance, it is understood that the benefits payable in respect thereof shall be paid to a beneficiary when he is on the territory of either of the two contracting Parties.

¹ Came into force in accordance with its final clause, on 1 November 1953, date of entry into force of the Convention.

3. We have found in the course of negotiations that no special provision needs to be made for determining which legislation is applicable to river boatmen, since there is no direct communication by water between the two countries.

This being so, the Convention of this day's date does not affect the legislation of the two countries in so far as it concerns employees and their employers, or self-employed persons in river navigation.

4. Subject to the provisions relating to need in the Belgian legislation, the benefit granted to a Swiss national under the Belgian legislation on old-age and survivors' insurance is not liable to any reduction by reason of the fact that the recipient is at the same time drawing benefit under the old-age and survivors' insurance legislation of both countries.

5. The two contracting Parties state that the Convention does not affect—

(a) the provisions relating to voluntary old-age and survivors' insurance in the Swiss legislation; and

(b) the provisions relating to free or continued insurance against old age and premature death in the Belgian legislation, in their application to Swiss nationals who leave Belgian territory.

This Protocol shall have effect on the same conditions and for the same period of time as the Convention of this day's date, of which it is an integral part.

DONE in duplicate, at Berne, 17 June 1952.

For Belgium :

(Signed) G. VAN DEN DAELE

(Signed) E. CHAMPENOIS

For Switzerland :

(Signed) A. SAXER