

No. 17124

**FEDERAL REPUBLIC OF GERMANY
and
SWEDEN**

**Convention on social security (with final protocol). Signed
at Stockholm on 27 February 1976**

Authentic texts: German and Swedish.

Registered by the Federal Republic of Germany on 13 October 1978.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
SUÈDE**

**Convention relative à la sécurité sociale (avec protocole
final). Signée à Stockholm le 27 février 1976**

Textes authentiques : allemand et suédois.

Enregistrée par la République fédérale d'Allemagne le 13 octobre 1978.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE KINGDOM OF SWEDEN ON SOCIAL SECURITY

The Federal Republic of Germany and the Kingdom of Sweden,
Wishing to regulate their relations in the area of social security,
Have agreed as follows:

S E C T I O N I

GENERAL PROVISIONS

Article 1. For the purposes of this Convention:

1. "Territory" means:

- In the case of the Federal Republic of Germany, the area in which the Basic Law for the Federal Republic of Germany is in force;
- In the case of the Kingdom of Sweden, the territory of Sweden;

2. "National" means:

- In the case of the Federal Republic of Germany, a German within the meaning of the Basic Law for the Federal Republic of Germany;
- In the case of the Kingdom of Sweden, a person of Swedish nationality;

3. "Legislation" means the laws, ordinances, regulations and other acts of a generally legislative nature relating to the branches of social security specified in article 2, paragraph (1);

4. "Competent authority" means:

- In the case of the Federal Republic of Germany, the Federal Minister for Labour and Social Affairs;
- In the case of the Kingdom of Sweden, the Government or the authority designated by the Government;

5. "Insurance authority" means the institute or authority responsible for the application of the legislation specified in article 2, paragraph (1);

6. "Competent insurance authority" means the insurance authority which is competent under the applicable legislation;

7. "Employment" means an employment or occupation within the meaning of the applicable legislation;

8. "Insurance periods" means contribution periods, periods of employment or periods of normal residence defined or recognized as insurance periods by the legislation under which they were completed, and other periods recognized by such legislation as equivalent to insurance periods, including calendar years for which pension points under the Swedish supplementary pension insurance scheme have been earned on the basis of employment during the year in question or part of that year;

¹ Came into force on 1 October 1977, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Bonn on 26 August 1977, in accordance with article 40 (2).

9. "Cash benefit" or "pension" means a cash benefit or pension, including any increase therein and any supplement or additional allowance payable therewith.

Article 2. (1) Except as otherwise provided in this Convention, it shall apply to:

1. The German legislation concerning:

- (a) Sickness insurance and protection of working mothers, in-so-far as it relates to the granting of cash benefits and benefits in kind by the sickness insurance authority;
- (b) Accident insurance;
- (c) Pensions insurance and the supplementary insurance scheme for iron and steel workers;
- (d) Farmers' old-age benefits.

2. The Swedish legislation concerning:

- (a) Sickness insurance including parents' insurance;
- (b) Accident insurance;
- (c) National basic pension;
- (d) Supplementary pension insurance.

(2) In the application of this Convention, legislation which arises for a Contracting State out of another international treaty or out of supranational law or which serves for the application of such a treaty or law shall not be taken into account.

Article 3. (1) This Convention shall apply, except as it provides otherwise, to nationals of the Contracting States, to other persons who are or have been subject to the legislation of one of the Contracting States and to persons who derive their rights from such a person.

(2) Except as otherwise provided in this Convention, the following persons normally resident in the territory of a Contracting State shall, as regards the application of the legislation of a State, be assimilated to nationals of that State:

- (a) Nationals of the other Contracting State;
- (b) Refugees within the meaning of article 1 of the Convention relating to the Status of Refugees of 28 July 1951¹ and the Protocol of 31 January 1967² to that Convention;
- (c) Stateless persons within the meaning of article 1 of the Convention of 28 September 1954³ relating to the Status of Stateless Persons;
- (d) Other persons in respect of rights which they derive from a national of a Contracting State or from a refugee or stateless person within the meaning of this article.

Article 4. (1) Except as otherwise provided in this Convention, cash benefits for disability or old age or for survivors, and pensions and lump-sum cash benefits in the case of an industrial accident (or occupational disease), shall also be paid if the person entitled thereto is staying in the territory of the other Contracting State and the person concerned comes under article 3, paragraph (2).

¹ United Nations, *Treaty Series*, vol. 189, p. 137.

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

(2) Except as otherwise provided in this Convention, benefits under the legislation of one Contracting State shall be paid to a national of the other Contracting State who is normally resident outside the territories of the Contracting States on the same conditions as to a national of the first-mentioned Contracting State who is normally resident outside those territories.

Article 5. Except as otherwise provided in articles 6 to 10, the obligation of a person to participate in an insurance scheme shall be governed by:

1. Swedish legislation if the person in question is normally resident in the Kingdom of Sweden or, with respect to accident insurance, if he is employed there;
2. German law if he is employed in the Federal Republic of Germany.

If the obligation to participate in an insurance scheme is determined by the place of employment, this shall be the deciding factor even if the work is performed for an employer in the other Contracting State.

Article 6. Where a person employed in one Contracting State is sent by his employer to the other Contracting State to work there for that employer, the legislation of the first-mentioned State shall continue to apply with respect to the obligation to participate in an insurance scheme until the end of the 24th calendar month after the employed person was sent abroad, as if he were still employed in its territory.

Article 7. (1) The crew of a seagoing vessel and other persons employed otherwise than purely temporarily on board a seagoing vessel shall be subject, with respect to the obligation to participate in an insurance scheme, to the legislation of the Contracting State whose flag the vessel flies.

(2) An employed person normally resident in the territory of one Contracting State who is temporarily employed on board a seagoing vessel flying the flag of the other Contracting State by an employer having his principal place of business in the territory of the first-mentioned Contracting State who is not the owner of the vessel shall be subject, with respect to the obligation to participate in an insurance scheme, to the legislation of the first-mentioned Contracting State as if he were employed in its territory.

Article 8. The provisions of articles 5 to 7 shall apply *mutatis mutandis* to persons who are not employed persons but to whom the legislation specified in article 2 applies.

Article 9. This Convention shall not affect the provisions of the Vienna Convention on Diplomatic Relations¹ or the Vienna Convention on Consular Relations² pertaining to the legislation specified in article 2, paragraph (1).

Article 10. At the joint request of the employed person and the employer, or at the request of a person assimilated to an employed person referred to in article 8, the competent public authority of the Contracting State whose legislation should apply under articles 5 to 9 may grant exemption from that legislation when the person in question becomes subject to the legislation of the other Contracting State. The nature and circumstances of the employment shall be taken into account in the decision. The competent public authority of the other Contracting State shall be given an

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

opportunity to express its views before the decision is taken. If the employed person is not employed in the territory of the last-mentioned Contracting State, he shall be deemed to be employed at the place where he was last previously employed. If he was not previously employed in that territory, he shall be deemed to be employed at the place where the competent public authority of that Contracting State has its seat.

Article 11. (1) Where, under the provisions of the legislation of one Contracting State, entitlement to a benefit is limited or does not exist, or where a benefit is reduced or not paid because it coincides with entitlement to another benefit or with the payment of other benefits, such provisions shall also apply with respect to a similar situation under the legislation of the other Contracting State. If, as a result of the foregoing, there should be a reduction in both benefits, each benefit shall be reduced by half the amount of the reduction that would be applied under the legislation on which entitlement to the benefit is based.

(2) Where, under the provisions of one Contracting State, entitlement to a benefit does not exist or a benefit is reduced as long as a person is employed or engages in a specific employment, or compulsory pensions insurance is in effect, such provisions shall also apply with respect to a similar situation under the legislation of the other Contracting State or within its territory.

SECTION II

SPECIAL PROVISIONS

CHAPTER 1. SICKNESS INSURANCE

Article 12. In so far as entitlement to benefits and the duration of benefits are concerned, insurance periods and periods of receipt of benefits completed under the legislations on both Contracting States shall be aggregated, provided that they do not overlap.

Article 13. (1) A person who is normally resident in the territory of one Contracting State and is entitled to sickness benefits in kind under the legislation of that State shall receive sickness benefits in kind during a temporary stay in the territory of the other Contracting State in accordance with the legislation of that State if, on account of his condition, he is in immediate need of such benefits.

(2) Paragraph 1 shall not apply in the case of a person who goes to the territory of the other Contracting State for the purpose of receiving care, especially where the purpose is to undergo treatment at a sanatorium or stay at a convalescent home or climatic health centre.

(3) As regards the procedure for an extent of the provision of benefits under paragraph (1), the legislation applicable to the insurance authority of the place of temporary residence shall apply.

Article 14. Family members of a person who is normally resident in the territory of one Contracting State and insured under the legislation of that State shall, if they are resident in the territory of the other Contracting State, receive sickness benefits in kind in accordance with the legislation to be applied by the insurance authority of their place of residence unless entitlement to sickness benefits in kind already exists under the legislation of the place of residence on other grounds.

Article 15. (1) A person receiving a pension under the pensions insurance schemes of the Contracting States shall be subject to the legislation concerning sickness insurance for pensioners in the Contracting State in whose territory such a person is normally resident. Where a pension is granted only in accordance with the legislation of the other Contracting State, such pension shall be considered, for the purpose of sickness benefits in kind, as a pension from the first-mentioned Contracting State.

(2) Paragraph (1) shall apply *mutatis mutandis* to persons applying for pensions.

Article 16. (1) The benefits provided for in articles 13 and 14 shall be granted:

- In the Federal Republic of Germany, by the General Local Sickness Fund competent for the place of temporary residence or, in the case of in-patient tuberculosis treatment, by the workers' pensions insurance authority competent for the place of temporary residence;
- In Sweden, by the general insurance fund competent for the place of temporary residence.

(2) Persons and institutions that have concluded agreements with the insurance authorities referred to in paragraph (1) concerning the provision of sickness benefits in kind to persons insured with those insurance authorities and their dependants shall be required to provide benefits in kind under articles 13 and 14, under the same conditions as if the persons concerned were insured with the insurance authorities referred to in paragraph (1) or were dependants of persons so insured and as if the agreements also applied to them.

(3) The costs of sickness benefits in kind granted under this article shall be borne by the insurance authority of the place of temporary residence.

Article 17. (1) Cash benefits under the sickness insurance legislation shall be paid even if the person entitled to benefits is staying in the territory of the other Contracting State.

(2) At the request of the competent insurance authority, cash benefits shall be paid by the insurance authority of the place of temporary residence specified in article 16, paragraph (1). The competent insurance authority shall reimburse the insurance authority of the place of temporary residence for the cash benefits paid out.

CHAPTER 2. ACCIDENT INSURANCE

Article 18. (1) Where the legislation of one Contracting State provides that, for the purpose of determining the degree of disability and establishing entitlement to compensation in the case of an industrial accident (or occupational disease) within the meaning of such legislation, account shall be taken of other industrial accidents (or occupational diseases), this shall also apply to industrial accidents (or occupational diseases) coming under the legislation of the other Contracting State as if they had been covered by the legislation of the first-mentioned State. Casualties which are to be taken into account under other laws as accidents or as other occurrences giving entitlement to compensation shall be assimilated to the accidents to be taken into account.

(2) The insurance authority liable for compensation in respect of the later occurrence shall determine its benefit according to the degree of disability, resulting from the industrial accident (or occupational disease), which it is required to take into account under its own national legislation.

Article 19. (1) As regards entitlement to benefits by reason of an occupational disease, the insurance authority of one Contracting State shall also take into account any employment exercised in the territory of the other Contracting State to which, in view of the nature of that employment, the disease may be attributed. If, as a result, there is an entitlement to benefits under the legislation of both Contracting States, benefits in kind and cash benefits, with the exception of the pension, shall be granted only under the legislation of the Contracting State in whose territory the beneficiary is normally resident. Each insurance authority shall grant that part of the pension which corresponds to the ratio of the duration of the employment exercised in the territory of its own State to the duration of all employment to be taken into account under the first sentence of this paragraph.

(2) The provisions of paragraph (1) shall also apply to the granting of survivors' benefits.

Article 20. (1) A person who, on account of an industrial accident (or occupational disease), is entitled to sickness benefits in kind under the legislation of one Contracting State shall, while staying in the territory of the other Contracting State, receive sickness benefits in kind from the insurance authority of the place of temporary residence under the legislation applicable to such insurance authority.

(2) In the cases provided for in paragraph (1), sickness benefits in kind shall be granted:

- In the Federal Republic of Germany, by the General Local Sickness Fund competent for the place of temporary residence,
- In Sweden, by the general insurance fund competent for the place of temporary residence of the person concerned.

(3) Where, under paragraph (1), vocational rehabilitation (vocational assistance) is to be granted, it shall be provided by the agency competent for the purpose in the territory of the State of temporary residence under the legislation applicable to that agency. The competent agency shall be the agency which would be competent if the decision concerning entitlement to benefits were required to be taken under the legislation of that Contracting State.

(4) The provisions of article 16, paragraph (2), shall apply *mutatis mutandis*.

(5) The costs of the benefits in kind granted under this article shall be borne by the insurance authority of the place of temporary residence.

Article 21. (1) Except as otherwise provided in article 4, paragraph (1), cash benefits under accident insurance legislation shall be paid even if the person entitled to benefits is staying in the territory of the other Contracting State.

(2) Cash benefits, with the exception of pensions, lump-sum settlements, nursing grants and death grants, shall be paid, at the request of the competent insurance authority, by the insurance authority referred to in article 20, paragraph (2). The competent insurance authority shall reimburse the insurance authority of the place of temporary residence for the cash benefits paid out.

CHAPTER 3. PENSIONS INSURANCE

Part 1. *Pensions insurance under German legislation*

Article 22. (1) Where there are reckonable insurance periods under the legislation of both Contracting States, insurance periods which are reckonable under German legislation and which do not overlap shall also be taken into account for the purpose of the acquisition of entitlement to benefits under Swedish legislation. The extent to which insurance periods completed under Swedish legislation are reckonable shall be governed by Swedish legislation.

(2) Insurance periods which are to be taken into account under the provisions of paragraph (1) shall come under the branch of the insurance system whose insurance authority is competent to determine benefits solely under German legislation. Where, in accordance with the foregoing, the miners' pensions insurance scheme is competent, insurance periods which are to be taken into account under Swedish legislation shall be taken into account in the miners' pensions insurance scheme if they were completed in mining operations underground.

(3) The insurance periods which are to be taken into account for the purposes of calculating pensions under German legislation shall constitute the bases for computation.

(4) In the case of discontinuance of equalization benefits under the miners' insurance scheme, Swedish mining operations shall be assimilated to German mining operations.

(5) If the conditions for entitlement to a pension are fulfilled only when the provisions of paragraph (1) are taken into account, only half of that portion of the benefit which pertains to the supplementary period shall be granted.

(6) If entitlement to a children's supplement exists without reference to paragraph (1) and no children's supplement or orphan's pension is paid under Swedish legislation, the children's supplement shall be paid in full even if it is included as a partial benefit in the orphan's pension. In other cases, half the amount of the children's supplement shall be paid.

(7) Where the obligation to participate in an insurance scheme depends on the fact that fewer than a specified number of contributions have been paid, insurance periods which are to be taken into account under Swedish legislation shall be taken into account for the purpose of deciding whether there is an obligation to participate in an insurance scheme.

Part 2. *Pensions insurance under Swedish legislation*

Article 23. For the purpose of the application of this Convention, national basic pensions under Swedish legislation shall be granted exclusively in accordance with articles 24 and 25.

Article 24. (1) A German national who is normally resident in Sweden shall be entitled, subject to the same conditions, in the same amount and with the same supplementary benefits as Swedish nationals to a national basic pension

(a) In the form of an old-age pension if he has been normally resident in Sweden for at least the past five years and, after attaining the age of 16 years, has been resident there for a total of at least 10 years,

- (b) In the form of an invalidity pension (*förtidspension*) if he
- (aa) Has been normally resident in Sweden for at least five years, or
 - (bb) Is normally resident in Sweden and has during his period of residence been fit for normal work for a continuous period of at least one year,
- (c) In the form of a widow's or orphan's pension,
- (aa) If the deceased immediately before his death had been normally resident in Sweden for at least five years and the survivor was at the time of death normally resident in Sweden, or
 - (bb) If the survivor has been normally resident in Sweden for at least five years and the survivor or the deceased was normally resident in Sweden at the time of death.

(2) An invalidity pension or a widow's pension to which entitlement exists under paragraph (1) shall be automatically replaced by an old-age pension when the person in question attains the general pension age.

(3) Paragraph (1) (b) shall apply *mutatis mutandis* to entitlements to benefits for the handicapped.

(4) The father or mother of a handicapped child shall be entitled to an allowance for the care of such child if the father or mother has been normally resident in Sweden for at least one year.

Article 25. (1) A German national who does not fulfil the requirements laid down in article 24 but is entitled to a supplementary pension shall, except as otherwise provided in paragraph (3), be entitled, whether normally resident in or outside Sweden, to a national basic pension with supplementary benefits corresponding to the number of calendar years for which he or, in the case of a widow's or orphan's pension, the deceased has earned pension points under the supplementary pensions insurance scheme. If the entitlement is for a full supplementary pension, a full national basic pension shall be paid. Otherwise the national basic pension shall be granted in an amount reduced accordingly.

(2) A widow's pension to which entitlement exists under paragraph (1) shall be replaced automatically by an old-age pension when the widow attains the general pension age. Should entitlement to a higher old-age pension exist, on the basis of the insurance periods completed by the widow herself, such pension shall be paid.

(3) Benefits for the handicapped which are not paid as a supplement to the national basic pension and allowances for the care of a handicapped child, pension supplements and pension benefits based on a means test shall be granted only for the period during which the person entitled to such benefits is resident in Sweden.

Article 26. For the purpose of granting supplementary pensions under Swedish legislation the following provisions shall apply:

1. A person who is not a Swedish national may earn pension points only on the basis of employment during normal residence in Sweden.
2. Where a person has completed insurance periods under both the Swedish supplementary pensions insurance scheme and the German pensions insurance scheme, such periods shall be aggregated for the establishment of entitlement to a supplementary pension, in so far as they do not overlap. The extent to which insurance periods completed under German legislation are reckonable shall be governed by German legislation.

3. For the purpose of calculating the supplementary pension only insurance periods coming under Swedish legislation shall be taken into account.

SECTION III

MISCELLANEOUS PROVISIONS

CHAPTER 1. OFFICIAL AND LEGAL ASSISTANCE

Article 27. (1) The insurance authorities, associations of insurance authorities, public authorities and courts of the Contracting States shall assist one another in the implementation of the legislation specified in article 2, paragraph (1), and of this Convention as if they were applying the legislation applicable to themselves. Such assistance shall be free of charge. Out-of-pocket expenses shall, however, be refunded.

(2) The first sentence of paragraph (1) shall also apply to medical examinations. The cost of such examinations, travel expenses, loss of earnings, the cost of hospitalization for observation and other out-of-pocket expenses, with the exception of postage, shall be refunded by the requesting agencies. The cost shall not be refunded if the medical examination is in the interest of the competent insurance authorities of both Contracting States.

Article 28. (1) Enforceable court orders and enforceable instruments issued by the insurance authorities or public authorities of a Contracting State in matters concerning contributions and other social insurance requirements shall be recognized in the other Contracting State.

(2) Recognition may be refused only where it would be contrary to the public policy of the Contracting State in which recognition of the order or instrument is sought.

(3) Enforceable orders and instruments which are recognized in accordance with paragraph (1) shall be enforced in the other Contracting State. The enforcement procedure shall be governed by the legislation which would apply in the Contracting State in whose territory enforcement is sought to the enforcement of the corresponding orders and instruments issued in that State. The copy of the order or instrument must contain a statement to the effect that it is enforceable (enforceability clause).

(4) Demands for payment made by insurance authorities in the territory of one Contracting State on the ground of arrears in contributions shall, in the event of distraint and in bankruptcy or composition proceedings in the territory of the other Contracting State, be given priority equal to that given to corresponding demands for payment in the territory of the last-mentioned Contracting State.

Article 29. (1) Exemptions from or reduction of taxes or charges, including consular and administrative charges, provided for by the legislation of one Contracting State in respect of documents or instruments required to be submitted in implementation of that legislation shall be extended to the corresponding documents and instruments required to be submitted in implementation of this Convention or the legislation of the other Contracting State specified in article 2, paragraph (1).

(2) Instruments required to be submitted in implementation of this Convention or the legislation specified in article 2, paragraph (1), shall not require legaliza-

tion or any other similar formality for use in dealing with agencies of the other Contracting State.

Article 30. The agencies referred to in article 27, paragraph (1), may, in implementation of the legislation specified in article 2, paragraph (1), and of this Convention, communicate directly in their official languages with one another and with the persons concerned and their representatives. Legislation concerning the use of interpreters shall not be affected. Judgements, decisions or other papers may be served on a person resident in the territory of the other Contracting State directly by registered letter with return receipt.

Article 31. (1) Where a claim to a benefit under the legislation of one Contracting State has been submitted to an agency in the other Contracting State which is empowered to receive a claim to a corresponding benefit under the legislation to which it is subject, the claim shall be deemed to have been submitted to the competent insurance authority. The foregoing shall apply *mutatis mutandis* to other claims and also to notices and appeals.

(2) Claims, declarations and appeals shall be forwarded, by the agency of a Contracting State to which they were submitted, without delay, to the competent agency of the other State.

(3) A claim to benefits under the legislation of one of the Contracting States shall also be deemed to be a claim to a corresponding benefit under the legislation of the other Contracting State. The foregoing shall not apply if the claimant expressly requests that the determination of an entitlement acquired under the legislation of the other Contracting State should be deferred in cases where, under that Contracting State's legislation he can determine the date by reference to which the conditions for the award of the benefit are deemed to be fulfilled.

Article 32. Career consular authorities of one Contracting State in the territory of the other Contracting State shall be entitled, upon request by the claimants, to take, without producing evidence of a power of attorney, such steps as may be necessary to ensure and uphold the rights of nationals of the first-mentioned State. They may, in particular, submit claims or deliver notices to, or lodge appeals with, the agencies referred to in article 27, paragraph (1), in the interests of such nationals.

CHAPTER 2. IMPLEMENTATION AND INTERPRETATION OF THE CONVENTION

Article 33. (1) The competent authorities may agree on the administrative measures necessary for implementing the Convention. They shall inform each other of any changes in, and additions to, the legislation applicable to them specified in article 2.

(2) For the purpose of implementing the Convention, the following liaison offices are hereby established:

In the Federal Republic of Germany:

- For sickness insurance, the Federal Association of Local Sickness Funds (*Bundesverband der Ortskrankenkassen*), Bonn-Bad Godesberg;
- For accident insurance, the Federation of Trade Associations (*Hauptverband der gewerblichen Berufsgenossenschaften e. V.*), Bonn;
- For manual workers' pensions insurance, the Schleswig-Holstein Land Insurance Institute (*Landesversicherungsanstalt Schleswig-Holstein*), Lübeck;

- For salaried workers' pensions insurance, the Federal Insurance Institute for Salaried Workers (*Bundesversicherungsanstalt für Angestellte*), Berlin;
- For miners' pensions insurance, the Federal Miners' Insurance Association (*Bundeskknappschaft*), Bochum;
- For the supplementary insurance scheme for iron and steel workers, the Land Insurance Institute for the Saar (*Landesversicherungsanstalt für das Saarland*), Saarbrücken;

In the Kingdom of Sweden, the National Social Insurance Board (*riksförsäkringsverket*), Stockholm.

Article 34. Cash benefits may be paid by the insurance authority of one Contracting State to a person staying in the territory of the other Contracting State in the currency of that State, thereby discharging that authority's obligations. In the relationship between the insurance authority and the person entitled to the benefit the currency conversion shall be determined by the exchange rate in force on the day when the cash benefit was remitted. If an insurance authority has to make payments to an insurance authority in the other Contracting State, such payments shall be made in the currency of the last-mentioned State. In the cases referred to in article 28, payments to be made by an insurance authority to an insurance authority of the other Contracting State shall be effected in the currency of the first-mentioned State.

Article 35. (1) Where the insurance authority of one Contracting State has erroneously paid cash benefits, the amount paid in error may be withheld, for account of the insurance authority, from a corresponding benefit under the legislation of the other Contracting State.

(2) Where the insurance authority of one Contracting State has made an advance payment in consideration of an entitlement to a benefit under the legislation of the other Contracting State, the amount paid shall be withheld, for account of that insurance authority, from the benefit.

(3) Where a person is entitled under the legislation of one Contracting State to a cash benefit in respect of a period for which he or his dependants have been granted benefits by a public assistance authority of the other Contracting State, the cash benefit shall, upon request by the public assistance authority entitled to compensation, be withheld for its account as if it were a public assistance authority having its seat in the territory of the first-mentioned Contracting State.

Article 36. (1) Any disputes between the two Contracting States concerning the interpretation or application of the Convention shall, as far as possible, be settled by the competent public authorities.

(2) Where a dispute cannot be settled in this manner, it shall, upon request by a Contracting State, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted *ad hoc*; each Contracting State shall appoint a member, and the two members shall agree on a national of a third State as chairman, who shall be appointed by the Governments of both Contracting States. The members shall be appointed within two months, and the chairman within three months, after one of the Contracting States has informed the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time-limits referred to in paragraph (3) are not adhered to, either Contracting State may, in the absence of any other agreement, request the President

of the European Court of Human Rights to make the necessary appointments. If the President is a national of a Contracting State or is unable to act for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of a Contracting State or is also unable to act, the next most senior member of the Court who is not a national of a Contracting State shall make the appointments.

(5) The arbitral tribunal shall take its decisions by majority vote, on the basis of the treaties existing between the parties and of general international law. Its decisions shall be binding. Each Contracting State shall defray the expenses of its member and the cost of its representation in the arbitral proceedings; the expenses of the chairman and other costs shall be shared equally by the Contracting States. The arbitral tribunal may make some other ruling concerning costs. In all other respects, the arbitral tribunal shall establish its own rules of procedure.

SECTION IV

TRANSITIONAL AND FINAL PROVISIONS

Article 37. (1) This Convention shall not create any entitlement to benefits in respect of periods prior to the date of its entry into force.

(2) For the purpose of the application of this Convention, relevant facts arising under the legislation of the Contracting States prior to the date of its entry into force shall also be taken into account.

(3) Earlier decisions shall not preclude the application of the Convention.

(4) Pensions determined before the date of entry into force of this Convention may, in consideration thereof, be revised *ex officio*. In such cases, without prejudice to the provisions of article 31, paragraph (2), the date on which the insurance authority initiates the procedure shall be deemed to be the date of submission of the claim under the legislation of the other Contracting State.

(5) If the revision under paragraph (4) would result in no pension or in a smaller pension than was last paid in respect of periods prior to the date of entry into force of this Convention, the pension shall continue to be granted at the rate previously paid.

Article 38. The final protocol annexed hereto shall form an integral part of this Convention.

Article 39. This Convention shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of Sweden within three months from the date of entry into force of this Convention.

Article 40. (1) This Convention shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Article 41. (1) This Convention is concluded for an indefinite period. Either Contracting State may denounce it, on three months' notice, as at the end of any calendar year.

(2) If, as a result of denunciation, the Convention ceases to have effect, its provisions shall continue to apply to entitlements to benefits acquired up to that time. Restrictive legislation relating to the preclusion of an entitlement or the suspension or withdrawal of benefits owing to residence abroad shall not be taken into account in respect of such entitlements.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their Governments, have signed this Convention and have thereto affixed their seals.

DONE at Stockholm on 27 February 1976 in two original copies, each in the German and Swedish languages, both texts being equally authentic.

For the Federal Republic of Germany:

DIETRICH STOECKER

WALTER ARENDT

For the Kingdom of Sweden:

SVEN ASPLING

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF SWEDEN ON SOCIAL SECURITY

At the time of signing the Convention on social security concluded this day between the Federal Republic of Germany and the Kingdom of Sweden, the plenipotentiaries of the two Contracting States declared that agreement had been reached on the following:

1. *Ad article 2 of the Convention:*

(a) The provisions of section II, chapter 3, of the Convention shall not apply to the supplementary insurance scheme for iron and steel workers and the farmers' old-age benefits which exist in the Federal Republic of Germany.

(b) If under the legislation of one Contracting State the requirements are met for the application of both this Convention and another convention or supranational provision, the insurance authority of that Contracting State shall, in applying the Convention, disregard the other convention or supranational provision.

(c) Article 2, paragraph (2), of the Convention and the provision contained in sub-paragraph (b) above shall not apply to social security legislation which, in the case of the Federal Republic of Germany, derives from an international agreement or from supranational law or which pertains to the application of such an agreement or such law in so far as the legislation contains special regulations concerning insurance liability (*Versicherungslastregelungen*).

2. *Ad article 3 of the Convention:*

(a) Provisions concerning insurance liability in treaties concluded with other States by the Federal Republic of Germany, shall not be affected.

(b) Legislation of a Contracting State guaranteeing the participation of insured persons and employers in the autonomous organs of insurance authorities and associations and in establishing the *usus fori* in social security matters shall not be affected.

(c) Swedish nationals who are normally resident outside the territory of the Federal Republic of Germany shall be entitled to optional insurance under the German pensions insurance scheme if they have lawfully contributed to such scheme for at least 60 months or were entitled to optional insurance on the basis of transitional provisions that were in force prior to 19 October 1972. This shall also apply to the refugees and stateless persons, normally resident in the territory of Sweden, referred to in article 3, paragraph (2), (b) and (c).

3. *Ad article 4 of the Convention:*

The German legislation concerning the granting of medical, vocational and supplementary rehabilitation benefits by an insurance authority for pensions insurance shall not be affected.

4. *Ad articles 4 and 21 of the Convention:*

The German legislation concerning benefits in respect of accidents sustained (or occupational diseases contracted) at a time when the person concerned was not insured under federal law and insurance periods not completed under federal law shall not be affected.

5. *Ad articles 6 to 10 of the Convention:*

A person who is employed in the territory of one Contracting State but who, under articles 6 to 10, is to be covered by the legislation of the other Contracting State as if he were employed in its territory shall be treated as if he were also normally resident in the territory of that State.

6. *Ad article 9 of the Convention:*

Persons covered by the provisions of article 9 shall be subject, if they are employed in Sweden and are German nationals, in so far as they are not covered by Swedish legislation, to the obligation to participate in an insurance scheme under German legislation as if they were employed in the Federal Republic of Germany. They shall be regarded as being employed at the place where the German competent authority has its seat.

7. *Ad article 11 of the Convention:*

(a) For the purpose of the application of Swedish legislation, a German pension shall be assimilated to a Swedish supplementary pension.

(b) Where a pension under German legislation concerning pensions insurance coincides with an annuity under the Swedish legislation concerning accident insurance, for the purpose of applying the German legislation only the basis for computation applied in calculating the German pension shall be taken into account.

(c) In the case of persons not covered by article 3, paragraph (2), the German legislation concerning reimbursement of contributions from the statutory pensions insurance scheme shall not be affected by article 11.

8. *Ad article 12 of the Convention:*

(a) If a person who has been insured under Swedish legislation takes up residence in the territory of the Federal Republic of Germany, he shall be entitled to optional continued insurance under German legislation. In such cases withdrawal from the Swedish general insurance fund shall be assimilated to separation from employment subject to compulsory insurance under German legislation. The insurance shall be continued with the local sickness fund competent for the place of normal residence. The foregoing shall apply *mutatis mutandis* to persons whose entitlement to continued insurance derives from the insurance of another person.

(b) For entitlement to optional continued insurance under the German legislation on sickness insurance, insurance periods completed under the legislations of the two Contracting States shall be aggregated in so far as they do not overlap.

(c) Article 12 shall apply *mutatis mutandis* to benefits which are payable under German legislation at the discretion of an insurance authority.

9. *Ad Article 15 of the Convention:*

(a) If German legislation is to be applied in accordance with the second sentence of paragraph (1), no contribution supplement shall be paid for the sickness insurance of the pensioner.

(b) In so far as persons receiving pensions from the German pensions insurance scheme were resident in the territory of Sweden prior to the entry into force of the Convention and were entitled to a contribution supplement under the German legislation on sickness insurance for pensioners, such entitlement shall not be affected as long as such persons continue to reside in the territory of Sweden.

(c) For the purpose of applying the second sentence of paragraph (1), a pension paid under the Swedish legislation on national basic pensions or supplementary pensions shall be regarded as a pension from the pensions insurance scheme for workers.

10. *Ad article 16, paragraph (3), and article 20, paragraph (5) of the Convention:*

(a) If a person is entitled under German legislation, subject to the provisions of the Convention, to benefits in respect of an injury for which he is entitled under other German legal provisions to claim compensation from a third party, such claim shall, in so far as German legislation permits, devolve upon insurance authority paying the benefits.

(b) When sufficient experience has been gained in the application of article 16, paragraph (3), and article 20, paragraph (5), the Contracting States shall jointly determine whether the costs of the benefits referred to in these provisions shall be governed by different rules.

11. *Ad Article 17 of the Convention:*

A lump-sum payment for costs connected with child birth under German legislation shall be regarded as a cash benefit under article 17.

12. *Ad article 18 of the Convention:*

Where under German legislation, the receipt of a pension under the pensions insurance scheme affects the amount of the benefit under the accident insurance scheme, the receipt of a corresponding pension under Swedish legislation shall have the same effect.

13. *Ad article 20 of the Convention:*

(a) In lieu of the German insurance authority referred to in paragraph (2), the benefit may be paid by the insurance authority for the German accident insurance scheme which would have been competent if the decision concerning entitlement to the benefit had been taken under German legislation.

(b) The competent authority for the measures provided for in paragraph (3) shall be: in the territory of the Federal Republic of Germany, the insurance authority for accident insurance and, in the territory of the Kingdom of Sweden, the National Labour Market Board.

14. *Ad article 22, paragraph (1) of the Convention:*

(a) For the purpose of applying German legislation, calendar years in which a person over the age of 16 years was normally resident in the territory of the Kingdom of Sweden prior to 1 January 1960 shall be assimilated to insurance periods which are reckonable under Swedish legislation, in so far as assessed income for Swedish national income tax has been calculated in respect of the person concerned for those years.

(b) For the purpose of the payment of increased benefits under German legislation concerning pensions insurance for miners, insurance periods which are reckonable under Swedish legislation shall not be taken into account.

(c) Article 22, paragraph (1), shall apply *mutatis mutandis* under the German pension insurance scheme with respect to benefits paid at the discretion of the insurance authority.

15. *Ad article 25 of the Convention:*

(a) If, in cases where both spouses are entitled to a national basic pension (*Volkpension*), the total amount of the pensions is smaller than the pension that one spouse would receive if only that spouse were entitled to the pension, the pensions shall be increased by the amount of the difference. The difference shall be divided proportionally between the two pensions.

(b) The requirement concerning entitlement to a supplementary pension under paragraph (1) shall be deemed to have been fulfilled if, in respect of the person concerned or, in the case of a widow's or orphan's pension in respect of the deceased, assessed income for national income tax has been calculated for years prior to 1960, provided that the total number of such years, added if necessary to the years for which pension points were earned under supplementary pensions insurance and to insurance periods under the German pensions insurance scheme, amounts to at least three. Twelve insurance months completed under the German pensions insurance scheme shall be assimilated to one year for which assessed income for Swedish national income tax has been calculated in respect of the person concerned.

(c) For the purpose of applying the provisions of paragraph 1 concerning the calculation of the national basic pension, years prior to 1960 for which assessed income for national income tax has been calculated shall be assimilated to years for which pension points have been earned under the supplementary pensions insurance scheme.

(d) A person claiming a pension by virtue of the provisions of item (b) or (c) above shall, in so far as necessary, prove that the prerequisites for entitlement to a pension have been met.

16. *Ad article 26 of the Convention:*

(a) The legislation concerning calculation of the supplementary pension for Swedish nationals born prior to 1924 shall not be affected,

(b) The legislation concerning pension points earned by foreign nationals on the basis of employment on board a Swedish merchant vessel shall not be affected.

17. As regards the application of the Convention, German legislation, in so far as it contains more favourable provisions relating to persons who have suffered injury because of their political views or for reasons of race, religion or opinion, shall not be affected.

DONE at Stockholm on 27 February 1976 in two original copies, each in the German and Swedish languages, both texts being equally authentic.

For the Federal Republic of Germany:

DIETRICH STOECKER

WALTER ARENDT

For the Kingdom of Sweden:

SVEN ASPLING
