

No. 17816



**SPAIN
and
LUXEMBOURG**

Convention on social security (with special protocol). Signed at Madrid on 8 May 1969

Supplementary Agreement to the above-mentioned Convention. Signed at Luxembourg on 27 June 1975

Agreement relating to the adjustment to the cost of living of family allowances transferred to Spain, concluded in accordance with article 29 (1) of the above-mentioned Convention of 8 May 1969. Signed at Luxembourg on 26 January 1978

Authentic texts: Spanish and French.

Registered by Spain on 22 May 1979.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN SPAIN AND THE GRAND DUCHY OF LUXEMBOURG ON SOCIAL SECURITY

His Excellency the Head of the Spanish State and His Royal Highness the Grand Duke of Luxembourg,

Desiring to strengthen the relations between the two States in matters of social security,

Have decided to conclude a new Convention on social security and, for that purpose, have appointed as their plenipotentiaries:

His Excellency the Head of the Spanish State: Mr. Fernando María Castiella y Maiz, Minister for Foreign Affairs,

His Royal Highness the Grand Duke of Luxembourg: Mr. Jean Dupong, Minister of Labour and Social Security,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

1. "Territory" means: in relation to Spain, the peninsular provinces, the Balearic Islands, the Canary Islands and the Spanish Provinces of North Africa; in relation to Luxembourg, the territory of the Grand Duchy.

2. "Legislation" means existing and future laws, regulations and statutory or other provisions relating to the matters referred to in article 2.

3. "Nationals" means:

—In relation to Spain, persons of Spanish nationality;

—In relation to Luxembourg, persons of Luxembourg nationality.

4. "Competent authority" means: in relation to Spain, the Minister of Labour; in relation to Luxembourg, the Minister of Labour and Social Security.

5. "Competent institution" means the institution with which the person concerned is insured at the time of the claim to benefits or with which he has or would continue to have title to benefits if he were resident in the territory of the Contracting Party in which he was last employed.

6. "Residence" means the place of habitual abode.

7. "Institution of the place of residence" means the institution with which the person concerned would be affiliated if he were insured in the country of his

¹ Came into force on 1 January 1972, i.e., the first day of the month that followed the month in which the exchange of the instruments of ratification took place at Luxembourg on 8 December 1971, in accordance with article 43.

residence or the institution designated by the competent authority of the country concerned.

8. "Institution of the place of abode" means the institution with which the person concerned would be insured in the country where he is staying temporarily or the institution designated by the competent authority of the country concerned.

9. "Competent State" means the Contracting Party in whose territory the competent institution is situated.

10. "Family members" means individuals defined or accepted as such by the legislation of the country of their residence; however, if this legislation regards as family members only those individuals who live together with the worker, this condition shall be regarded as fulfilled where such individuals are mainly dependent on him. "Survivors" means individuals defined or accepted as such by the applicable legislation.

11. "Insurance periods" means periods of contribution or employment, as defined or accepted as insurance periods in the legislation under which they have been completed, as well as all equivalent periods in so far as they are treated the same as insurance periods by the said legislation.

12. "Benefits", "pensions" or "annuities" mean the benefits, pensions or annuities, including all items payable out of public funds which complete or may complete the benefits, pensions or annuities of social security to which this Convention relates, increments, revaluation allowances or supplementary allowances, lump-sum benefits which may be made in lieu of pensions or annuities, and payments made by way of reimbursement of contributions.

13. "Death allowance" means any amount paid once only in the event of death.

14. "Liaison agency" means any of the agencies defined as such by the Administrative Arrangement.

Article 2

This Convention shall apply:

A. In Spain:

(a) To the general social security scheme legislation concerning:

1. Maternity, sickness and occupational diseases, temporary loss of working capacity and industrial and other accidents;
2. Temporary and permanent invalidity;
3. Old-age, death and survivors' insurance;
4. Family welfare;
5. Unemployment;
6. Retraining and rehabilitation of invalids;
7. Social welfare;

(b) To the legislation governing the following special schemes:

1. Agricultural scheme (except self-employed persons);
2. Seamen;

3. Domestic servants;
4. Coal-miners.

B. In Luxembourg, to the legislation concerning:

- (1) Sickness insurance for manual workers and employees;
- (2) Industrial accident and occupational disease insurance;
- (3) Unemployment benefits;
- (4) Family allowances of employed persons (not including birth benefits);
- (5) Pension insurance for manual workers and persons in private employment;
- (6) Additional insurance for mine workers and for manual workers in the metallurgical industries.

Article 3

Paragraph 1. The provisions of this Convention shall apply to employed persons or persons treated as such who are or have been subject to the legislation of one of the Contracting Parties and are nationals of one of the Parties, and to the members of their families and their survivors.

Paragraph 2. The provisions of this Convention shall not apply to members of diplomatic and consular missions.

Paragraph 3. The provisions of this Convention may be extended to the self-employed worker scheme by means of an administrative arrangement.

Article 4

Nationals of one of the Contracting Parties to whom the provisions of this Convention apply shall be subject to the requirements and entitled to the benefits of the legislation specified in article 2 on the same conditions as nationals of the other Party.

Article 5

Paragraph 1. Pensions or annuities, including increments, acquired under the legislation of one of the Contracting Parties shall not be reduced, modified, suspended, discontinued or withheld on the ground that the beneficiary is resident in the territory of the Contracting Party other than that in whose territory the Competent Institution is situated. The same shall apply to such benefits as, in lump-sum form, may be substituted for pensions or annuities, the death allowance and payments made by way of reimbursement of contributions.

Paragraph 2. Social security benefits of one of the Contracting Parties shall be paid to nationals of the other Contracting Party resident in the territory of a third State on the same conditions and to the same extent as to nationals of the first-named Party resident in the territory of that third State.

Article 6

Paragraph 1. The provisions of this Convention shall not operate to confer or maintain any right to receive, under the legislation of the Contracting Parties, more than one benefit of the same nature or more than one benefit relating to the same insurance period or equivalent period, save where, in the case of the

invalidity, old-age and death benefits referred to in this Convention, liability for payment is divided between the competent institutions of both Contracting Parties.

Paragraph 2. The provisions of the legislation of one Contracting Party concerning the reduction or suspension of benefits in the event of the beneficiary's being simultaneously in receipt of other social security benefits or other income or his carrying on an occupation shall apply to him even where the benefits in question are payable under a scheme of the other Contracting Party or where the income is received or the occupation carried on in the territory of the other Contracting Party.

Paragraph 3. Where the application of this rule results in the reduction or suspension of the benefits payable under the legislation of both Contracting Parties, the amount by which each such benefit may be reduced or suspended shall not exceed one half of the amount which is not to be paid.

Paragraph 4. However, the foregoing paragraph shall not apply to cases where benefits of the same nature are acquired in accordance with the provisions of articles 19 and 20 of this Convention.

Paragraph 5. Where the application of paragraph 2 results in the reduction or suspension of a benefit awarded under articles 19 and 20, account shall be taken, for the purpose of such reduction or suspension, only of such part of the benefits, income or remuneration as is determined in proportion to the duration of the periods completed in accordance with the provisions of article 20, paragraph 1, sub-paragraph (b).

Paragraph 6. If the legislation of one Contracting Party subjects the reimbursement of contributions to the condition that the person concerned shall have ceased to be subject to compulsory insurance, such condition shall not be deemed fulfilled so long as the person concerned is liable to compulsory insurance under the legislation of the other Contracting Party.

TITLE II. PROVISIONS DETERMINING APPLICABLE LEGISLATION

Article 7

Subject to the provisions of this title, an employed person or a person treated as such who is employed in the territory of one of the Contracting Parties shall be subject to the legislation of that Party, even if he is still deemed to be resident in the territory of the other Party or his employer or the principal place of business of the enterprise which employs him is in the territory of the other Party.

Article 8

The principle laid down in the preceding article shall be subject to the following exceptions:

- (a) An employed person or a person treated as such who is resident in the territory of one of the Contracting Parties and is sent to the territory of the other Contracting Party by the enterprise which normally employs him in the territory of the first-mentioned Party shall remain subject to the legislation of the first-mentioned Party, as though he were employed in its territory, for the first 12 months of his employment in the territory of the other Party; if the duration of such employment exceeds 12 months, the legislation of the first-mentioned Party shall continue to apply for a further period of not more than

12 months, provided that the competent authority of the other Party has given its consent before the end of the first 12-month period;

- (b) An employed person or a person treated as such who is in the service of an enterprise engaged, on behalf of others or on its own account, in the transport of passengers or goods by rail, road, air or water, with its principal place of business in the territory of one of the Contracting Parties, and who is employed in a travelling or sea-going capacity, shall be subject to the legislation of the Contracting Party in whose territory the enterprise has its principal place of business; if, however, the enterprise has a branch or a permanent agency in the territory of the other Contracting Party, persons employed by such branch or permanent agency shall be subject to the legislation of the Contracting Party in whose territory the branch or permanent agency is situated.

Article 9

Paragraph 1. Without prejudice to the provisions of article 3, paragraph 2, the provisions of article 7 shall apply to employed persons or persons treated as such who are employed at the diplomatic or consular posts of the Contracting Parties or are in the personal employ of the officers of such posts.

Paragraph 2. However, an employed person as specified in paragraph 1 of this article who is a national of the Contracting Party represented by the diplomatic or consular post in question may, within a period of three months after the start of his employment or the entry into force of this Convention, elect to be subject to the legislation of the sending State.

Paragraph 3. Paragraph 2 shall not apply to employees of honorary members of consular agencies.

Article 10

The competent authorities of the Contracting Parties may, by agreement, make exceptions to the provisions of articles 7 to 9 of this Convention for specific employed persons or groups of employed persons, as relates to the applicable legislation.

TITLE III. SPECIAL PROVISIONS

Chapter 1. SICKNESS, MATERNITY AND DEATH (DEATH ALLOWANCES)

Article 11

For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an employed person or a person treated as such has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods and equivalent periods completed under the legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

Article 12

Paragraph 1. An employed person or a person treated as such who has completed insurance periods or equivalent periods under the legislation of one of the Contracting Parties and who moves to the territory of the other Contracting Party shall be entitled, for himself and for such members of his family as are in

that territory, to the benefits provided for by the legislation of the latter Contracting Party, provided that:

- (a) He was fit for employment when he last entered the territory of the latter Contracting Party;
- (b) He has been subject to compulsory insurance after he last entered that territory;
- (c) He satisfies the conditions imposed by the legislation of the latter Contracting Party, account being taken of the aggregation of the periods referred to in the preceding article.

Paragraph 2. Where, in the cases specified in paragraph 1 of this article, an employed person or a person treated as such does not satisfy the conditions laid down in sub-paragraphs (a), (b) and (c) of that paragraph, and he would still be entitled to benefits under the legislation of the Contracting Party in whose territory he was last insured before his change of residence if he were in that territory, he shall remain entitled to benefits for risks occurring during the period of 21 days from the last day on which he was subject to the compulsory insurance scheme of that Party. The institution of that Party may request the institution of the place of residence to provide benefits in kind in accordance with the legislation applied by the latter institution.

Article 13

Paragraph 1. An employed person or a person treated as such who is insured with an institution of one of the Contracting Parties and is resident in the territory of that Party or a person entitled to a pension or annuity from the institution of one of the Contracting Parties and resident in the territory of that Party shall be entitled to benefits during a temporary stay in the territory of the other Contracting Party if his state of health necessitates immediate medical treatment, including admission to hospital.

Paragraph 2. An employed person or a person treated as such who has acquired the right to benefits from an institution of one of the Contracting Parties and who is resident in the territory of that Party shall retain that right if he transfers his residence to the territory of the other Contracting Party; before transferring his residence, however, he must obtain the consent of the competent institution, which shall take due account of the reasons for the transfer.

Paragraph 3. In the cases referred to in paragraphs 1 and 2 of this article, benefits in kind shall be provided by the institution of the place of abode or new place of residence in accordance with the provisions of the legislation applied by that institution, particularly as regards the scale of such benefits and the manner of providing them; the duration of such benefits shall, however, be that prescribed by the legislation of the competent State.

Paragraph 4. In the cases specified in paragraphs 1 and 2 of this article, the provision of prostheses, of large prosthetic devices and of other major benefits in kind shall be subject, except in cases of absolute urgency, to authorization by the competent institution.

Paragraph 5. Where an employed person or a person treated as such is entitled to cash benefits under the provisions of paragraphs 1 and 2 of this article, such benefits shall be paid in accordance with the legislation of the competent

State. Such benefits may be paid by the institution of the other State as agent for the competent institution according to rules to be laid down in an administrative arrangement.

Paragraph 6. The provisions of the preceding paragraphs shall apply *mutatis mutandis* to family members in cases where they are staying temporarily in the territory of the other Contracting Party or where they transfer their residence to the territory of the other Contracting Party after falling sick or becoming pregnant.

Article 14

Paragraph 1. Members of the family of an employed person or of a person treated as such who is insured with an institution of one of the Contracting Parties shall, when resident in the territory of the other Contracting Party, be entitled to benefits in kind as though the employed person were insured with the institution of their place of residence. The scale and duration of such benefits and the manner of providing them shall be determined in accordance with the provisions of the legislation applied by the latter institution.

Paragraph 2. Where family members transfer their residence to the territory of the competent State, they shall be entitled to benefits in kind in accordance with the provisions of the legislation of that State. This rule shall also apply where the family members have already received, in respect of the same case of sickness or the same pregnancy, benefits provided by the institutions of the Contracting Party in whose territory they were resident before the transfer; if the legislation applied by the competent institution prescribes a maximum duration for the provision of benefits, the period for which benefits were provided immediately before the transfer of residence shall be taken into account.

Paragraph 3. The provisions of this article shall not apply to family members as specified in paragraph 1 of this article who carry on an occupation in their country of residence or who receive a pension or annuity which entitles them to benefits in kind.

Article 15

Where the application of this chapter would entitle an employed person or a person treated as such, or a member of his family, to maternity benefits under the legislation of both Contracting Parties, the legislation in force in the territory of the Contracting Party where the birth takes place shall apply to the person concerned, account being taken, in so far as necessary, of the aggregation of periods referred to in article 11 of this Convention.

Article 16

Paragraph 1. Where a person in receipt of pensions or annuities payable under the legislation of both Contracting Parties is resident in the territory of one of the Contracting Parties and is entitled to benefits in kind under the legislation of that Party, such benefits shall be provided for him and for members of his family by the institution of his place of residence as though he were in receipt of a pension or annuity solely under the legislation of his country of residence. The cost of such benefits shall be borne by the institution of the country of residence.

Paragraph 2. Where a person in receipt of a pension or annuity under the legislation of one of the Contracting Parties is resident in the territory of the

other Contracting Party, any benefits in kind to which he may be entitled under the legislation of the first-mentioned Party shall be provided for him and for members of his family by the institution of his place of residence.

Paragraph 3. If the legislation of one Contracting Party provides, in order to cover the cost of benefits in kind, for contributory deductions payable by a pensioner or annuitant, the institution which is liable for the pension or annuity shall be empowered to make such deductions in the cases specified in this article.

Article 17

Paragraph 1. The cost of benefits in kind provided under article 12, paragraph 2, article 13, paragraphs 1, 2 and 6, article 14, paragraph 1, and article 16, paragraph 2, of this Convention shall be repaid by the competent institutions to the institutions which provided the said benefits.

Paragraph 2. The amount due shall be determined and repaid according to rules to be laid down in an agreement between the competent authorities; the repayment may be made in lump sums.

Article 18

Paragraph 1. Where an employed person or a person treated as such who is subject to the legislation of a Contracting Party or a person in receipt of a pension or annuity or a member of his family dies in the territory of the other Party, he shall be considered as having died in the territory of the first Party.

Paragraph 2. The competent institution shall assume liability for the death allowance even if the beneficiary is in the territory of the other Contracting Party.

Chapter 2. INVALIDITY, OLD-AGE AND DEATH (PENSIONS)

Article 19

Paragraph 1. For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods and equivalent periods completed under the legislation of each Contracting Party shall be aggregated, provided that they do not overlap.

Paragraph 2. Where the legislation of one Contracting Party makes it a condition for the award of particular benefits that the insurance periods should be completed in an occupation which is subject to a special scheme, only the periods completed under the corresponding schemes of the other Contracting Party and the periods completed in the same occupation under other schemes of the latter Contracting Party shall be aggregated, provided that they do not overlap, for the purpose of qualification for such benefits.

Paragraph 3. If the insurance periods and equivalent periods under the legislation of one of the Contracting Parties amount in all to less than six months, no benefit shall be payable under that legislation; in such case, the said periods shall be taken into account for the purposes of the acquisition, maintenance and recovery of the right to benefits from the other Contracting Party, but not for the purpose of determining the proportionate amount due under article 20, paragraph 1, sub-paragraph (b), of this Convention. This provision shall not, however, apply if the right to benefits was acquired under the legislation of the first-

mentioned Contracting Party solely on the basis of periods completed under that legislation.

Article 20

Paragraph 1. The benefits to which an insured person as specified in article 19 of this Convention or his survivors may be entitled in virtue of the legislation of the Contracting Parties under which the insured person has completed insurance periods or equivalent periods shall be determined in the following manner:

- (a) The institution of each of the Contracting Parties shall determine in accordance with its own legislation, taking into account the aggregation of periods referred to in the preceding article, whether the person concerned satisfies the conditions for entitlement to the benefits provided for by that legislation;
- (b) Where the right to benefit is established in accordance with the preceding sub-paragraph, the said institution shall calculate, separately, the amount of the benefit to which the person concerned would be entitled if all the insurance periods or equivalent periods, aggregated in the manner specified in the preceding article, had been completed exclusively under its own legislation; on the basis of that amount, the institution shall determine the amount of benefit due according to the proportion which the duration of the periods completed under that legislation, before the contingency materialized, bears to the total duration of the periods completed under the legislation of both Contracting Parties before the contingency materialized; the latter amount shall represent the benefit payable to the person concerned by the institution in question;
- (c) Where, at a given time, account being taken of the aggregation of periods referred to in the preceding article, the person concerned does not satisfy the conditions imposed by the bodies of legislation applicable to him but satisfies only the conditions imposed by one of those bodies of legislation, the amount of the benefit shall be determined in accordance with the provisions of sub-paragraph (b) of this paragraph;
- (d) Where, at a given time, the person concerned does not satisfy the conditions imposed by the bodies of legislation applicable to him but satisfies the conditions imposed by only one of those bodies of legislation, irrespective of the periods completed under the other bodies of legislation, the amount of the benefit shall be determined exclusively in accordance with the legislation which confers the entitlement, account being taken only of the periods completed under the last-mentioned legislation;
- (e) In the cases specified in sub-paragraphs (c) and (d) of this paragraph, the benefits already determined shall be revised in accordance with the provisions of sub-paragraph (b) of this paragraph as and when the conditions imposed by the other bodies of legislation are satisfied, account being taken of the aggregation of periods referred to in the preceding article.

Paragraph 2. Where the amount of the benefit to which, but for the application of the provisions of article 19, the person concerned might be entitled solely on the basis of the insurance periods and equivalent periods completed under the legislation of one Contracting Party is greater than the total benefits which accrue from the application of the preceding paragraph of this article, he

shall be entitled to receive from the institution of that Party an additional amount equal to the difference.

Paragraph 3. Subject to the provisions of paragraph 1, sub-paragraph (d), of this article, persons who can avail themselves of the provisions of this chapter may not claim entitlement to a pension solely under the provisions of the legislation of one Contracting Party.

Article 21

Insurance periods and equivalent periods completed by insured persons and persons treated as such under a social security scheme, to which this Convention does not apply but which are taken into account under a scheme to which this Convention does apply, shall be deemed to be insurance periods or equivalent periods to be taken into account for purposes of aggregation.

The rules for the application of this article shall be the subject of an administrative arrangement.

Article 22

Paragraph 1. For entitlement to a pension and the calculation of such pension, account being taken of the aggregation of insurance periods in accordance with article 19 of this Convention, the following rules shall govern in cases where Spanish legislation applies:

- (a) The mean base of the contributions paid in Spain during an uninterrupted period of 24 months shall constitute the reference income for the calculation of the pension; such period shall be elected by the person concerned from among the seven years immediately preceding the date on which entitlement to the benefit arises, or otherwise from among the seven years immediately preceding his last departure from Spain;
- (b) If the period elected also includes Luxembourg insurance periods, the mean base of contributions considered for the Spanish insurance periods shall also apply to such Luxembourg insurance periods.

Paragraph 2. If the amount of the pension to which one of the persons referred to in this article may be entitled does not come to at least 15% of the pension which would have been owed to him for 35 years of contributions, he shall be entitled to a single allowance equivalent to the actuarial value of the pension acquired.

Chapter 3. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 23

Where, for the purpose of assessing the degree of disability in the case of an industrial accident or occupational disease under the legislation of one of the Contracting Parties, that legislation explicitly or implicitly provides that previous industrial accidents or occupational diseases shall be taken into account, industrial accidents sustained and occupational diseases contracted at an earlier date under the legislation of the other Contracting Party shall also be taken into account as though they had been sustained or contracted under the legislation of the first-mentioned Party.

Article 24

Where an employed person or a person treated as such who has received compensation for an occupational disease from the competent institution of one of the Contracting Parties claims compensation for an occupational disease of the same nature under the legislation of the other Party, he must furnish the competent institution of the latter Party with the necessary particulars concerning the benefits previously granted in compensation for the occupational disease in question.

The institution liable for the new benefits shall take the previous benefits into account as though it had itself been liable for their payment.

Article 25

Compensation for silicosis, in cases in which a worker has been exposed to the risk in more than one country, shall be the subject of an administrative arrangement.

Article 26

The provisions relating to benefits under sickness insurance shall apply, *mutatis mutandis*, to the payment of benefits under industrial accident and occupational disease insurance.

Chapter 4. UNEMPLOYMENT

Article 27

An employed person or a person treated as such who moves from the territory of one of the Contracting Parties to the territory of the other Contracting Party shall be entitled while in the latter territory to the unemployment benefits provided for by the legislation of the latter Party, provided that he satisfies the conditions imposed by the legislation of that Party, account being taken of the aggregation of the periods conferring entitlement to unemployment benefits in each territory.

Chapter 5. FAMILY ALLOWANCES

Article 28

Where the legislation of one of the Contracting Parties makes the acquisition of the right to family allowances conditional upon the completion of insurance periods or equivalent periods, the competent institution of that Party shall take into account, to such extent as may be necessary, all periods completed in the territory of each of the Contracting Parties.

Article 29

Paragraph 1. An employed person or a person treated as such who is employed in the territory of one of the Contracting Parties and who has children residing or being brought up in the territory of the other Party shall be entitled to family allowances for such children under the legislation of the first-mentioned Party up to an amount of seven European Monetary Agreement (EMA) units of account per child per month. This amount may be adjusted to the cost of living by agreement between the competent authorities.

Paragraph 2. Where one of the parents carries on an occupation in the territory of one of the Contracting Parties, and the other in the territory of the second Contracting Party, the only allowances payable are those of the legislation of the place of work of the father; if necessary, the country where the mother works shall pay a supplement to make up the difference between the allowances paid to the father and those provided for by its legislation.

Paragraph 3. The family allowances referred to in this article shall not be paid beyond the age specified by the legislation of the country of residence of the children.

Paragraph 4. Within the purview of this article, the term "child" means a child as defined by the applicable legislation.

Article 30

(a) A person entitled to a pension or annuity payable under the legislation of one of the Contracting Parties shall be entitled to the family allowances provided for by the legislation of that Party even if the members of his family are resident in the territory of the other Contracting Party.

(b) A person entitled to a pension or annuity payable under the legislation of both Contracting Parties shall be entitled to family allowances, the cost of which shall be borne by the competent agency of his country of residence.

(c) The provisions of paragraphs 3 and 4 of article 29 shall apply, *mutatis mutandis*.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 31

The competent authorities shall conclude administrative arrangements for the application of this Convention. They shall communicate to each other full information regarding measures taken for the application of this Convention and regarding any changes in their legislation which may affect its application.

Article 32

Paragraph 1. For the purposes of the application of this Convention, the authorities and institutions shall lend one another their good offices and shall act as though the application of their own legislation were involved.

Paragraph 2. Contributions payable to an institution of one of the Contracting Parties may be collected in the territory of the other Party, in accordance with administrative procedure and subject to the guarantees and privileges applicable to the collection of contributions payable to a corresponding institution of the latter Party.

Paragraph 3. The rules for the application of this article may be the subject of an administrative arrangement.

Article 33

Where a person in receipt of benefits under the legislation of one of the Contracting Parties for an injury sustained in the territory of the other Party is entitled, in the territory of the latter Party, to claim compensation for the injury

from a third party, any rights that the institution liable for the benefits may have against the third party shall be dealt with as follows:

- (a) Where the institution liable for the benefits is entitled, under the legislation applicable to it, to exercise the rights possessed by the beneficiary with regard to the third party, each Contracting Party shall recognize such entitlement;
- (b) Where the institution liable for the benefits has a direct right against the third party, each Contracting Party shall recognize that right.

Article 34

Paragraph 1. Any exemption from or reduction of charges, stamp duties, court fees or registration fees provided for by the legislation of one of the Contracting Parties in respect of papers or documents required to be produced pursuant to the legislation of that Party shall be extended to similar papers and documents required to be produced pursuant to the legislation of the other Contracting Party or to this Convention.

Paragraph 2. Legalization by diplomatic or consular authorities and payment of chancery fees shall be waived in respect of all certificates, documents and papers required to be produced for the purposes of this Convention.

Article 35

All communications addressed for the purposes of the application of this Convention to the institutions or judicial or other authorities of one of the Contracting Parties which are competent in social security matters shall be drawn up in one of the official languages of the Contracting Parties.

Article 36

Claims, declarations or appeals which should have been presented for the purposes of the legislation of one of the Contracting Parties, within a prescribed time-limit, to an authority, institution or other agency of that Party, shall be admissible if they are presented within the same time-limit to a corresponding authority, institution or other agency of the other Contracting Party. In such cases, the authority, institution or agency concerned shall transmit such claims, declarations or appeals to the competent authority, institution or agency of the first-mentioned Contracting Party without delay, either direct or through the competent authorities of the two Contracting Parties.

Article 37

Paragraph 1. The institutions of one Contracting Party which are liable under this Convention for the payment of cash benefits to beneficiaries who are in the territory of the other Contracting Party shall be held to discharge their liability validly by payment in the currency of the first-mentioned Party; moneys due from such institutions to institutions which are in the territory of the other Contracting Party must be paid in the currency of the latter Party.

Paragraph 2. Transfers of funds required for 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.

Article 38

Paragraph 1. Any dispute between the Contracting Parties relating to the interpretation or application of this Convention shall be the subject of direct negotiations between the competent authorities of the Contracting Parties.

Paragraph 2. If the dispute cannot be resolved by that means within a period of six months from the opening of negotiations, it shall be submitted to an arbitral commission whose composition shall be determined by agreement between the Contracting Parties. The procedure to be followed shall be determined in the same manner.

The arbitral commission shall resolve the dispute in accordance with the fundamental principles and the spirit of this Convention. Its decisions shall be binding and final.

Article 39

Paragraph 1. Where an institution of one Contracting Party has made an advance payment to a person entitled to benefits, such institution or, at its request, the competent institution of the other Party may deduct the amount of the advance from the payments to which such person is entitled.

Paragraph 2. Where a beneficiary has received public assistance from one Contracting Party during a period for which he is entitled to cash benefits, the institution liable for such benefits shall, at the request and for the account of the institution which granted the public assistance, withhold such benefits until the amount of the benefits paid to the beneficiary in the form of public assistance has been recovered.

Article 40

The legislation of the country of residence shall apply to benefits paid through an institution of that country as concerns assignment and attachment, the safeguarding of the rights of the family and the right of succession to unpaid arrears of benefit in the event of the death of the beneficiary.

For the purposes of the foregoing paragraph, the institution paying the benefits shall act in the place of the competent institution in all administrative or judicial proceedings.

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 41

Paragraph 1. This Convention shall not confer any right to the payment of benefits for a period before the date of its entry into force.

Paragraph 2. Any insurance period or equivalent period completed under the legislation of one of the Contracting Parties before the date of the entry into force of this Convention shall be taken into account for the purpose of determining the right to benefits in accordance with the provisions of this Convention.

Paragraph 3. Subject to the provisions of paragraph 1 of this article, a pension or annuity shall be payable under this Convention even in respect of an

event which occurred before the date of its entry into force. To this end, any pension or annuity which has not been paid or which has been suspended by reason of the nationality of the person concerned or because he is resident in the territory of the other Contracting Party shall, upon his application, be paid or reinstated as from the date of the entry into force of this Convention, provided that the entitlement previously awarded has not been liquidated by a lump-sum payment.

Paragraph 4. With regard to the rights arising out of the application of the preceding paragraph, the legislative provisions of the Contracting Parties concerning the lapse and extinction of rights shall not apply to the beneficiary, provided that the claim is presented within a period of two years from the date of the entry into force of this Convention.

If the claim is presented after the expiry of that period, such right to benefit as has not lapsed or been extinguished shall be acquired as from the date of presentation of the claim, unless more favourable legislative provisions of a Contracting Party are applicable.

Article 42

This Convention shall be ratified and the instruments of ratification shall be exchanged at Luxembourg as soon as possible.

Article 43

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

Article 44

This Convention is concluded for a term of one year. It shall be tacitly renewed from year to year unless notice of termination is given not later than three months before the expiry of the current term.

Article 45

Paragraph 1. In the event of the termination of this Convention, any right acquired in accordance with its provisions shall be maintained.

Paragraph 2. Rights which are in process of acquisition in respect of periods completed before the date on which the termination takes effect shall not be extinguished by the termination; the preservation of such rights in respect of the period after termination shall be determined by agreement or, in the absence of such agreement, by the national legislation of the institution concerned.

Article 46

The Convention between the Spanish State and the Grand Duchy of Luxembourg dated 22 June 1963 is abrogated as from the date of entry into force of this Convention.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Madrid on 8 May 1969, in two original copies, in the Spanish and French languages, both texts being equally authentic.

For the Spanish State:

[Signed]

FERNANDO MARIA CASTIELLA
Minister for Foreign Affairs

For the Grand Duchy of Luxembourg:

[Signed]

JEAN DUPONG
Minister of Labour and Social Security

SPECIAL PROTOCOL

On signing the Convention between Spain and the Grand Duchy of Luxembourg on Social Security, the respective plenipotentiaries have agreed on the following provisions, which shall constitute an integral part of the Convention:

I

Notwithstanding article 41, paragraph 2, of this Convention, insurance periods or equivalent periods completed before 1 January 1946 under Luxembourg pension (invalidity, old-age and death) insurance legislation shall be taken into account only to the extent that rights in course of acquisition have been preserved or recovered in accordance with that legislation.

II

The special increments provided for by Luxembourg legislation for invalidity and survivors' pensions shall not be transferable.

The same shall be true of old-age, invalidity and survivors' pensions or fractions of such pensions corresponding to insurance periods covered by a lump-sum payment pursuant to Luxembourg legislation and of benefits resulting from any amendment to article 8 of the law of 16 December 1963 concerning the co-ordination of pension schemes.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Protocol and have thereto affixed their seals.

DONE at Madrid on 8 May 1969, in two original copies, in the Spanish and French languages, both texts being equally authentic.

For the Spanish State:

[Signed]

FERNANDO MARIA CASTIELLA
Minister for Foreign Affairs

For the Grand Duchy of Luxembourg:

[Signed]

JEAN DUPONG
Minister of Labour and Social Security

[TRANSLATION — TRADUCTION]

SUPPLEMENTARY AGREEMENT¹ TO THE CONVENTION
BETWEEN SPAIN AND THE GRAND DUCHY OF LUXEM-
BOURG ON SOCIAL SECURITY SIGNED ON 8 MAY 1969²

His Excellency the Head of the Spanish State and His Royal Highness the Grand Duke of Luxembourg,

Desiring to develop the relations between the two States in matters of social security,

Have decided to revise certain provisions of the Convention between Spain and the Grand Duchy of Luxembourg on Social Security, signed on 8 May 1969,² hereinafter referred to as the "Convention", and, for that purpose, have appointed as their plenipotentiaries:

His Excellency the Head of the Spanish State: Mr. Fernando Sebastián de Erice y O'Shea, Ambassador Extraordinary and Plenipotentiary,

His Royal Highness the Grand Duke of Luxembourg: Mr. Bernard Berg, Minister of Labour and Social Security,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Article 1. Article 2 of the Convention is amended as follows:

"Article 2. This Convention shall apply:

A. In Spain:

1. To the general social security scheme legislation concerning:
 - (a) Maternity, sickness and occupational diseases, temporary loss of working capacity and industrial and other accidents;
 - (b) Temporary and permanent invalidity;
 - (c) Old-age, death and survivors' insurance;
 - (d) Family welfare;
 - (e) Unemployment;
 - (f) Social welfare and social services.
2. To the legislation governing the following special schemes:
 - (a) Agricultural workers;
 - (b) Seamen;
 - (c) Coal miners;
 - (d) Railway workers;
 - (e) Domestic servants;

¹ Came into force on 1 June 1977, i.e., the first day of the month that followed the month in which the exchange of the instruments of ratification took place at Madrid on 9 May 1977, in accordance with article 8.

² See p. 288 of this volume.

- (f) Commercial travellers;
 - (g) Artists;
 - (h) Students;
 - (i) Writers of books;
 - (j) Bullfighters.
- B. In Luxembourg, to the legislation concerning:
- (a) Sickness insurance for manual workers and employees;
 - (b) Industrial accident and occupational disease insurance;
 - (c) Unemployment benefits;
 - (d) Family allowances of employed persons (not including birth benefits: birth allowances and prenatal allowances);
 - (e) Pension insurance for manual workers and persons in private employment;
 - (f) Additional insurance for mine workers, manual workers in the metallurgical industries and professional drivers.”

Article 2. Article 12 of the Convention shall read as follows:

“Article 12. 1. An employed person or a person treated as such who has completed insurance periods or equivalent periods under the legislation of one of the Contracting Parties and who moves to the territory of the other Contracting Party shall be entitled, for himself and for such members of his family as are in that territory, to the benefits provided for by the legislation of the latter Contracting Party, provided that:

- (a) He was fit for employment when he last entered the territory of the latter Contracting Party;
- (b) He has been subject to compulsory insurance after he last entered that territory;
- (c) He satisfies the conditions imposed by the legislation of the latter Contracting Party, account being taken of the aggregation of periods referred to in the preceding article.

“Paragraph 2. Where, in the cases specified in paragraph 1 of this article, an employed person or a person treated as such does not satisfy the conditions laid down in sub-paragraphs (a), (b) and (c) of that paragraph, and he would still be entitled to benefits under the legislation of the Contracting Party in whose territory he was last insured before his change of residence if he were in that territory, he shall remain entitled to benefits for risks occurring during the period of 21 days from the last day on which he was subject to the compulsory insurance scheme of that Party. The institution of that Party may request the institution of the place of residence to provide benefits in kind in accordance with the legislation applied by the latter institution.

“In case of transfer of residence from the territory of one of the Contracting Parties to the territory of the other Party as a consequence of the termination of the employment contract, the employed person or person treated as such shall retain the right to maintain optional insurance for a

period not to exceed three months from the first day of the month following that in which the transfer of residence took place.”

Article 3. Article 18 of the Convention shall read as follows:

“Article 18. Paragraph 1. Where an employed person or a person treated as such who is subject to the legislation of a Contracting Party or a person in receipt of a pension or annuity or a member of his family dies in the territory of the other Party, he shall be considered as having died in the territory of the first Party.

“Paragraph 2. The competent institution shall assume liability for the death allowance even if the beneficiary is in the territory of the other Contracting Party.

“Paragraph 3. In the event of the death of a person in receipt of a pension or annuity or of a member of his family, the death allowance shall be payable by the Contracting Party competent for benefits in kind, in accordance with article 16 of this Convention. It shall be paid in Spain by the competent institution for the death allowance and in Luxembourg by the competent institution for sickness benefits.”

Article 4. Article 19 of the Convention is amended as follows:

“Article 19. Paragraph 1. For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods and equivalent periods completed under the legislation of each Contracting Party shall be aggregated, provided that they do not overlap.

“Paragraph 2. Where the legislation of one Contracting Party makes it a condition for the award of particular benefits that the insurance periods should be completed in an occupation which is subject to a special scheme, only the periods completed under the corresponding schemes of the other Contracting Party and the periods completed in the same occupation under other schemes of the latter Contracting Party shall be aggregated, provided that they do not overlap, for the purpose of qualification for such benefits.

“Paragraph 3. If the insurance periods and equivalent periods under the legislation of one of the Contracting Parties amount in all to less than one year, no benefit shall be payable under that legislation; in such case, the said periods shall be taken into account for the purposes of the acquisition, maintenance and recovery of the right to benefits from the other Contracting Party, but not for the purpose of determining the proportionate amount due under article 20, paragraph 1, sub-paragraph (b), of this Convention. This provision shall not, however, apply if the right to benefits was acquired under the legislation of the first-mentioned Contracting Party solely on the basis of periods completed under that legislation.”

Article 5. Article 22 of the Convention shall read as follows:

“Article 22. In the event of application of Spanish legislation, for entitlement to a pension and the calculation of such pension, account being taken of the aggregation of insurance periods in accordance with article 19 of this Convention, the mean base of the contributions paid in Spain during an uninterrupted period of 24 months shall constitute the reference income for

the calculation of the pension; such period shall be elected by the person concerned from among the seven years immediately preceding the date on which entitlement to the benefit arises, or otherwise from among the seven years immediately preceding his last departure from Spain.”

Article 6. Point II of the special protocol dated 8 May 1969 is abrogated and replaced by a new point II which reads as follows:

“II. 1. Notwithstanding the provisions of article 20 of the Convention, the fixed portion of Luxembourg pensions shall be calculated in accordance with Luxembourg legislation.

“2. The complement to make up the minimum pension and the additional amount for a child in Luxembourg pensions shall be granted in the same proportion as the fixed portion.

“3. Insurance periods as specified in article 1, section 11, of the Convention which are completed under Luxembourg legislation by Spanish nationals not residing in Luxembourg territory shall be treated as periods of residence for the purposes of allocation of the fundamental portion in Luxembourg pensions.”

Article 7. The special protocol dated 8 May 1969 is completed by a point III worded as follows:

“III. For the application of chapter 2 of the Convention, the requirement of Spanish legislation making it a condition for the granting of benefits that the worker or, in the case of survivors’ benefits, the deceased, should have been subject to that legislation at the time when entitlement to the benefit materialized, shall be deemed fulfilled if the worker or the deceased, depending upon the case, was subject to Luxembourg legislation at that time.”

Article 8. This Supplementary Agreement, which shall have the same duration as the Convention, shall enter into force on the first day of the month following the month in which the instruments of ratification are exchanged.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Supplementary Agreement and have thereto affixed their seals.

DONE at Luxembourg on 27 June 1975, in two original copies, in the Spanish and French languages, both texts being equally authentic.

For the Spanish State:

[Signed]

FERNANDO SEBASTIAN DE ERICE
Y O’SHEA

Ambassador Extraordinary
and Plenipotentiary

For the Grand Duchy of Luxembourg:

[Signed]

BERNARD BERG

Minister of Labour and Social Security

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE COMPETENT AUTHORITIES OF SPAIN AND THE GRAND DUCHY OF LUXEMBOURG RELATING TO THE ADJUSTMENT TO THE COST OF LIVING OF FAMILY ALLOWANCES TRANSFERRED TO SPAIN

In pursuance of article 29, paragraph 1, of the Convention between Spain and the Grand Duchy of Luxembourg on social security, signed on 8 May 1969,² the competent Spanish and Luxembourg authorities have agreed on the following provisions:

Article 1. (1) With a view to the adjustment of family allowances to the evolution of the cost of living, an increment of 20 francs is granted, thus raising the amount of 350 francs resulting from the application of article 29 of the aforesaid Convention to 370 francs.

(2) The total provided for in the preceding paragraph corresponds to number 225 of the Luxembourg cost-of-living index related to the 1948 base and shall be adjusted as from 1 February 1978 to the evolution of the same index in accordance with the established rules pertaining to family allowances.

Article 2. This Agreement shall enter into force on 1 February 1978 and shall cease to be in effect upon the entry into force of the Second Supplementary Agreement to the Convention between Spain and the Grand Duchy of Luxembourg on Social Security.

DONE at Luxembourg on 26 January 1978, in two original copies, in the Spanish and French languages, both texts being equally authentic.

For the Government of Spain:

[Signed]

JOSÉ LUIS LOS ARCOS
Ambassador of Spain

For the Government
of the Grand Duchy of Luxembourg:

[Signed]

BENNY BERG
Minister of Labour and Social Security

¹ Came into force on 1 February 1978, in accordance with article 2.

² See p. 288 of this volume.