

No. 17926

**FRANCE
and
SWITZERLAND**

**Convention on social security (with annexed final protocol).
Signed at Berne on 3 July 1975**

**Special Protocol to the above-mentioned Convention
relating to non-contributory benefits under invalidity,
old-age and survivors' insurance. Signed at Berne on
3 July 1975**

Authentic texts: French.

Registered by France on 31 July 1979.

**FRANCE
et
SUISSE**

**Convention de sécurité sociale (avec protocole final annexé).
Signée à Berne le 3 juillet 1975**

**Protocole spécial à la Convention susmentionnée, relatif aux
prestations non contributives des assurances invalidité,
vieillesse et survivants. Signé à Berne le 3 juillet 1975**

Textes authentiques : français.

Enregistrés par la France le 31 juillet 1979.

[TRANSLATION — TRADUCTION]

CONVENTION¹ ON SOCIAL SECURITY BETWEEN THE FRENCH REPUBLIC AND THE SWISS CONFEDERATION

The Government of the French Republic and the Swiss Federal Council, desiring to adapt the relations between the two countries in the field of social security to the changes which have been made in their respective laws since the signing of the Convention on Old-Age and Survivors' Insurance of 9 July 1949,²

Having decided to conclude a convention to replace that instrument,

Have agreed as follows:

TITLE I. DEFINITIONS AND LEGISLATION

Article 1. For the purposes of this Convention:

1. The term "territory of a Contracting State" means:

—In relation to France: the European Departments and the Overseas Departments (Guadeloupe, Martinique, French Guyana, Réunion) of the French Republic;

—In relation to Switzerland, the territory of the Swiss Confederation.

2. Nationals of the Contracting States are:

—In relation to France: persons of French nationality;

—In relation to Switzerland: persons of Swiss nationality.

3. "Competent authority" means:

—In relation to France: the ministers responsible, each as relates to him, for the application of the legislation referred to in article 2 of this Convention;

—In relation to Switzerland: the Federal Office of Social Insurance.

Article 2. 1. This Convention shall apply to the following social security legislation:

A. In France:

(a) The legislation defining the organization of social security;

(b) The legislation defining the social insurance scheme applicable to persons employed in non-agricultural occupations and the social insurance legislation applicable to persons employed in agricultural occupations;

(c) The legislation relating to the prevention of and compensation for industrial accidents and occupational diseases; the legislation relating to insurance against accidents in private life, industrial accidents and occupational diseases of self-employed persons exercising agricultural occupations;

¹ Came into force on 1 November 1976, i.e., the first day of the second month following the date of the last of the notifications (effected on 9 July and 13 September 1976) by which the Contracting States informed each other of the completion of the required constitutional procedures, in accordance with article 43 (1).

² Voir p. 16 of this volume.

- (d) The legislation relating to family benefits;
- (e) The legislation relating to special social security schemes, including the social security scheme applicable in the mining industry;
- (f) The legislation relating to the schemes for seafarers, subject to any conditions laid down by the Administrative Agreement relating to the application of this Convention;
- (g) The legislation relating to sickness and maternity insurance for self-employed persons exercising non-agricultural occupations and the legislation relating to sickness, invalidity and maternity insurance for self-employed persons engaging in agricultural occupations;
- (h) The general legislation relating to the old-age allowance and old-age insurance for self-employed persons engaging in non-agricultural occupations, the legislation relating to the scheme managed by the *Caisse nationale des barreaux français* and the legislation relating to old-age insurance for self-employed persons engaging in agricultural occupations;

B. In Switzerland:

- (a) The Federal legislation concerning old-age and survivors' insurance;
- (b) The Federal legislation concerning invalidity insurance;
- (c) The Federal legislation concerning compulsory insurance against industrial and non-industrial accidents and occupational diseases;
- (d) The Federal legislation concerning family allowances for agricultural workers and small farmers;
- (e) The Federal legislation concerning sickness insurance.

2. This Convention shall apply also to any laws or regulations codifying, amending or supplementing the legislation specified in paragraph 1 of this article.

It shall, however, apply to:

- (a) Laws or regulations covering a new branch of social security only if the Contracting States have concluded an agreement to that effect;
- (b) Laws or regulations extending existing schemes to new categories of beneficiaries only if the State which has amended its legislation does not oppose such application and notify the other State to that effect within a period of three months from the date of the official publication of the said laws or regulations.

3. (a) Paragraph 1, A (b), of this article notwithstanding, the Convention shall not apply to the provisions of the Social Security Code, book VI, part I, relating to students, unless an agreement to that effect is concluded between the Contracting States.

(b) Paragraph 1, A, of this article notwithstanding, the Convention shall not apply to the provisions concerning voluntary old-age insurance for French nationals employed or having been employed outside of French territory.

(c) Paragraph 1, A (d), of this article notwithstanding, the Convention shall not apply to the provisions of French family benefit legislation concerning the maternity allowance.

4. Paragraph 1, B, of this article notwithstanding, the Convention shall not apply to the provisions of Swiss law relating to optional old-age, survivors' and invalidity insurance for Swiss nationals and assistance benefits paid to Swiss nationals residing outside of Switzerland.

5. This Convention shall not apply to non-contributory benefits under invalidity, old-age and survivors' insurance, which are governed by a special protocol.

TITLE II. GENERAL PROVISIONS

Article 3. 1. Subject to the reservations and procedures specified in this Convention and the Final Protocol thereto, nationals of either Contracting State shall be subject to the obligations of the legislation of the other State and eligible for benefits under that legislation in the same manner as nationals of the latter State.

2. Subject to the same reservations and procedures, provisions of the legislation of one of the States restricting the rights of foreigners, requiring periods of residence or depriving foreigners of rights by reason of their place of residence shall not apply to nationals of the other State.

3. The provisions of the Convention shall not affect the application of the provisions of the legislation of each Contracting State concerning the participation of insured persons and their employers in the management of social security institutions and the operation of social security jurisdictions.

Article 4. 1. For the purposes of eligibility for compulsory or continued voluntary or optional insurance in accordance with the legislation of the Contracting State in whose territory the person concerned is resident, insurance periods completed under the legislation of the other Contracting State shall be considered, in so far as necessary, as insurance periods completed under the legislation of the first-mentioned State.

2. These provisions shall apply to sickness insurance, subject to the provisions of points 9 and 10 of the Final Protocol.

3. The provisions of paragraph 1 of this article shall apply only to persons who are ineligible for compulsory insurance under the legislation of the country of employment.

Article 5. Provisions of the legislation of a Contracting State which call for a reduction or suspension in the event that the beneficiary is simultaneously in receipt of other social security benefits or of other income or owing to the fact that he is employed shall apply to him even if such benefits are acquired under the scheme of the other Contracting State or such revenue is obtained from employment exercised in the territory of the latter State. This rule shall not apply where benefits identical in nature are acquired under articles 17 and 18 of this Convention.

Article 6. 1. The provisions of this Convention shall apply to persons who are or who have been subject to the legislation of either of the Contracting States and who are nationals of either of those States, and to members of their families and their survivors.

2. The provisions of this Convention shall apply to the survivors of persons who have been subject to the legislation of either Contracting State,

regardless of the nationality of those persons, if the survivors are nationals of either Contracting State.

TITLE III. APPLICABLE LEGISLATION

Article 7. 1. Subject to the provisions of this title, employed persons exercising their occupation in the territory of one of the States shall be subject to the legislation of that State even if they are resident in the territory of the other State or if their employer or the principal place of business of the enterprise employing them is in the territory of the latter State.

2. Subject to the same reservations, self-employed persons exercising their occupation in the territory of one of the States shall be subject to the legislation of that State even if they are resident in the territory of the other State.

3. Where a person exercises two or more concurrent occupations, whether on an employed or self-employed basis, in the territory of both States, each occupation shall be governed by the legislation of the State in whose territory it is exercised.

For the purposes of applying the legislation of one State, account may be taken of the occupation exercised in the territory of the other State.

Article 8. 1. The principle laid down in article 7, paragraph 1, admits of the following exceptions:

(a) Persons employed by an enterprise having its principal place of business in the territory of one of the States who are sent for a limited period to the territory of the other State in order to perform work there shall remain subject, for a duration of 24 months including vacation time, to the legislation of the first-mentioned State, as though they were employed at the place where the enterprise sending them has its principal place of business, provided that the employed person is not being sent to replace another employed person whose period of assignment has come to an end. If the period of assignment is extended beyond the said time-limit, the application of the legislation of the first-mentioned State may exceptionally be maintained for a period to be agreed upon by the competent authorities of the two States.

(b) Employed persons or persons treated as such who belong to public transport enterprises having their principal place of business in one of the countries and are employed in the other country, whether temporarily or on lines of inter-communication or at frontier stations on a permanent basis, shall be deemed to have their place of employment in the country where the enterprise has its principal place of business.

Travelling personnel belonging to transport enterprises other than those referred to in the preceding paragraph, which operate in the territory of both States, shall be deemed to be employed in the State in whose territory the enterprise has its principal place of business.

(c) Where employed persons who belong to an air transport enterprise that has its principal place of business in the territory of either State are transferred to the territory of the other State, they shall be subject to the legislation of the State in whose territory the enterprise has its principal place of business. If, however, the enterprise has a branch or permanent agency in the territory of the other State, persons employed by such branch or permanent agency shall

be subject to the legislation of the State in whose territory it is situated, unless they are sent there on a non-permanent basis.

(d) Employed persons who belong to an official administrative department and are seconded from one State to the other shall be subject to the legislation of the State which seconded them.

(e) Employed and self-employed persons whose activity is carried on in enterprises or workplaces traversed by the common border of the two States shall be subject to the legislation of the State in whose territory the enterprise or workplace has its principal place of business.

2. The provisions of paragraph 1 of this article apply to all employed persons, whatever their nationality, as relates to those who are seconded from Switzerland to France.

Article 9. 1. Diplomatic agents shall be exempt from the social security legislation of the receiving State in respect of their services to the sending State, subject, however, to paragraph 3 below.

2. Notwithstanding article 7, paragraph 1, members of a mission's administrative and technical staff, members of a mission's service staff and private servants who are in the sole employ of the persons referred to in this paragraph and paragraph 1 shall be subject to the legislation of the sending State, provided that they are nationals of that State.

However, if they are engaged in the territory of the receiving State, they shall be insured according to the legislation of that State, unless they opt for the legislation of the sending State.

3. The persons referred to in paragraphs 1 and 2 shall comply, with respect to the persons in their employ, with the obligations which the legislation of the sending or receiving State, as appropriate, generally imposes on employers.

4. Paragraphs 1 to 3 of this article shall apply *mutatis mutandis* to members of consular posts and to members of the private staff who are in their sole employ.

5. The procedure for the exercise of the option provided for in paragraphs 2 and 4 above shall be specified in the Administrative Agreement.

6. Paragraphs 1 to 4 shall not apply to honorary members of consular posts.

Article 10. The competent authorities of the two Contracting States may, by agreement, in specific cases and bearing in mind the social needs of those concerned, make exceptions to the provisions of articles 7 to 9 in the case of particular individuals or groups of persons.

TITLE IV. SPECIAL PROVISIONS CONCERNING BENEFITS

Chapter I. INVALIDITY INSURANCE

A. Application of Swiss legislation

Article 11. For the purposes of entitlement to a Swiss invalidity benefit, French nationals resident in Switzerland and frontier workers who can no longer be occupied in Switzerland owing to an illness or accident, but whose invalidity

is certified in that country, shall be considered as being insured under Swiss legislation for a period of one year from the date on which the interruption of work followed by invalidity occurred and must pay contributions to Swiss old-age, survivors' and invalidity insurance as if they had their domicile in Switzerland.

Article 12. Married women and widows of French nationality who are not gainfully occupied and minors of the same nationality shall be entitled, as long as they are resident in Switzerland, to take advantage of the rehabilitation measures provided under Swiss invalidity insurance, if they have been resident in Switzerland continuously for at least one year immediately before the onset of invalidity; minors shall also be entitled to take advantage of such measures if they are resident in Switzerland and were either born there handicapped or have been resident there continuously since their birth.

Article 13. For the purposes of the determination of the contribution periods to be used as a basis for calculating the ordinary annuity payable under Swiss invalidity insurance to a French or Swiss national, insurance periods and equivalent periods completed under French legislation shall be treated as Swiss contribution periods in so far as they do not overlap with the latter periods. For the purposes of the determination of the average annual income, only Swiss contribution periods and the corresponding income shall be taken into account.

B. Application of French legislation

Article 14. For the purposes of the acquisition, maintenance or recovery of the right to a French invalidity pension, insurance periods and equivalent periods completed under Swiss legislation shall be taken into consideration, in so far as necessary, provided that such periods do not overlap.

C. Common provisions

Article 15. 1. Invalidity benefits to which a person is entitled under the present Convention shall be paid in accordance with the legislation to which that person was subject when, in the case of France, the interruption of work followed by invalidity occurred and, in the case of Switzerland, the onset of invalidity occurred according to Swiss law.

2. The cost of the benefit, calculated according to the rules set forth in paragraph 1 of this article, shall be borne exclusively by the institution which is competent under the legislation referred to in the same paragraph.

Article 16. 1. An invalidity benefit shall, where appropriate, be converted into an old-age pension as soon as the conditions, particularly those relating to age, imposed by the legislation of the State under which it was granted are fulfilled.

If such conversion was effective pursuant to French legislation, the provisions of chapter 2 shall apply at the time when the person concerned becomes entitled to the old-age pension under Swiss legislation.

If the conversion was effected pursuant to Swiss legislation, chapter 2 shall immediately apply.

2. Where the total benefits for which an insured person is eligible from each of the old-age insurance schemes of the two countries are lower than the amount of the invalidity pension or annuity, he shall be entitled to a differential supplement, the cost of which shall be defrayed by the scheme liable for the payment of the said pension or annuity.

Chapter II. OLD-AGE SURVIVORS' INSURANCE

Article 17. For the purposes of the acquisition, maintenance or recovery of the right to a benefit under the legislation of either Contracting State, insurance periods and equivalent periods completed under the insurance scheme of the other State shall be taken into consideration, in so far as necessary, provided that such periods do not overlap.

Article 18. 1. Where such right is acquired under article 17 and the legislation applied by the institution liable for the payment of the benefit so permits, the said institution shall calculate, for the sake of form, 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 article 17, had been completed exclusively under its own legislation; on the basis of that amount, the institution shall determine, within the limits of the periods to be taken into consideration under the legislation which it applies, the amount due in proportion to the duration of the periods completed under that legislation, before the contingency materialized, compared with the total duration of the periods completed under the legislation of the two States; the latter amount shall represent the benefit payable to the person concerned by the institution in question. The person concerned may request the competent institution to calculate the benefit solely on the basis of the periods completed under the legislation which it applies.

2. Where a minimum insurance period of one year is required for entitlement to a benefit under the legislation of one of the Contracting States, the competent institution of that State shall itself calculate the benefit solely on the basis of the periods completed under the legislation which it applies.

3. Periods equivalent to insurance periods shall, for each State, be those which are recognized as such by the legislation of that State.

Where a period treated as equivalent to an insurance period under the legislation of one State coincides with an insurance period completed in the other State, only the insurance period shall be taken into consideration by the institution of the latter State.

4. Where an insurance period completed under a compulsory insurance scheme pursuant to the legislation of one of the States coincides with an insurance period completed under a continuing voluntary or optional insurance scheme of the other State, only the first-mentioned period shall be taken into account.

Article 19. Where the insurance periods completed under the legislation of one of the States amount to less than one year, no benefit shall be payable under the legislation of that State.

Nevertheless, such periods shall be taken into consideration for the purposes of entitlement through aggregation of periods in respect of the legislation of the other State as provided in article 18 above, unless this results in a decrease in the benefit payable under the legislation of that State.

Article 20. 1. Where an insured person does not simultaneously fulfil the conditions required by the legislation of both States but fulfils only the conditions of the legislation of one State, his pension entitlement shall be established under the legislation of that State, the insurance periods or equivalent periods completed in both States not being aggregated.

2. When the conditions imposed by the legislation of the second State are fulfilled, the benefits due to the insured person shall be reviewed in accordance with the provisions of articles 18 and 19 of this chapter, if he opts in favour of the joint application of the legislations of each of the Contracting States.

*Chapter III. PROVISIONS COMMON TO INVALIDITY, OLD-AGE
AND SURVIVORS' INSURANCE*

Article 21. 1. If, under the legislation of one of the States, the amount of the benefit varies according to the number of members of the family, the institution which pays such benefit shall take into account the members of the family resident in the territory of the other State.

2. Where, under the legislation of one of the States, the payment of benefits is based on the average wage or income for all or part of the insurance period, the average wage or income to be taken into account for the purpose of computing the benefits payable by the institutions of that State shall be determined with only the insurance period completed under the legislation of that State taken into account.

Article 22. Reassessments and adjustments provided for under Swiss and French legislation on the basis, *inter alia*, of changes in the level of wages or increases in the cost of living shall be directly applied by each State to the benefits paid pursuant to article 18, there being no need to undertake a new computation in accordance with the said article.

Article 23. Where, pursuant to the legislation referred to in article 2, A, the award of old-age or invalidity benefits is conditional upon the insurance periods having been completed in an occupation which comes under a special insurance scheme, only periods completed in Switzerland in the same occupation shall be taken into account for the purpose of eligibility for such benefits.

Where, notwithstanding the aggregation of such periods, the insured person does not qualify for benefits under the special scheme, the periods in question shall be aggregated with a view to his entitlement to benefits under the general scheme.

Chapter IV. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 24. 1. Employed persons or persons treated as such who are insured under the legislation of one of the Contracting States and who sustain an industrial accident or contract an occupational disease,

- a) Either in the territory of the Contracting State other than the competent State,
- b) Or in the territory of the competent State,
 - i) And who transfer their residence to the territory of the other contracting State,
 - ii) Or whose condition, in the case of temporary residence in that territory, becomes such that immediate medical care, including admission to hospital, is required,

shall be entitled, at the expense of the competent institution, to the benefits in kind provided by the institution of their permanent or temporary place of residence. If an employed person transfers his residence, he must obtain the authorization of the competent institution before the transfer takes place. Such

authorization may be refused only if the move is likely to impair his health or compromise the success of a course of medical treatment.

2. Where an employed person is entitled to benefits under the provisions of the preceding paragraph, benefits in kind shall be furnished by the institution of his new or temporary place of residence, in accordance with the provisions of the legislation applied by that institution with respect, *inter alia*, to the scope of the benefits in kind and the manner in which they are furnished; however, the length of time during which the benefits are furnished shall be that provided for in the legislation of the competent State.

3. The granting of prostheses, major appliances and other substantial benefits in kind shall be subject to authorization from the competent institution, except where any delay would seriously jeopardize the life or health of the person concerned.

4. Where the legislation of a Contracting State prescribes a maximum length of time during which benefits may be granted, the institution applying that legislation shall, if need be, take into account the period during which benefits have already been furnished by an institution of the other Contracting State.

5. The cost of benefits in kind furnished in the cases referred to in paragraph 1 of this article shall be refunded to the institutions which have furnished them, according to the rates charged by those institutions.

6. In the cases referred to in paragraph 1 of this article, cash benefits shall be furnished by the competent institution in accordance with the legislation applied by it.

However, they may be furnished by the institution of the new or temporary place of residence upon the request and at the expense of the competent institution, in accordance with procedures to be determined by the Administrative Agreement.

Article 25. 1. If, for the purpose of assessing the extent to which earning capacity has been impaired as a result of an industrial accident or occupational disease under the legislation of one of the Contracting States, that legislation provides explicitly or implicitly that industrial accidents sustained or occupational diseases contracted at an earlier date should be taken into consideration, industrial accidents sustained and occupational diseases contracted at an earlier date under the legislation of the other Contracting State shall also be taken into account as though they had been sustained or contracted under the legislation of the first Contracting State.

2. If, under the legislation of either Contracting State, the average wage or salary for a specified period is taken into account for the purposes of payment of cash benefits, the average wage or salary to be taken into account in computing the benefits shall be determined on the basis of the wages or salaries recorded during the period completed under the legislation of that Contracting State.

3. If, under the legislation of either Contracting State, the amount of cash benefits varies according to the number of members of the family, the competent institution shall also take into account, in computing such benefits, the members of the family resident in the territory of the Contracting State other than the State in which the said institution is situated.

Article 26. 1. Benefits in the case of an occupational disease which may be compensated under the legislation of both Contracting States shall be awarded only under the legislation of the State in whose territory the person concerned was last employed in the occupation likely to have caused such a disease and provided that the person concerned fulfils the conditions required by that legislation.

2. Where the legislation of a Contracting State makes it a condition of entitlement to occupational disease benefits that the disease should have been ascertained medically for the first time in the territory of that State, that condition shall be deemed to be fulfilled if the said disease was ascertained for the first time in the territory of the other Contracting State.

Article 27. Where, in the event of aggravation [of] an occupational disease, an employed person who has received or is receiving compensation for an occupational disease under the legislation of one Contracting State claims, in respect of an occupational disease of the same nature, entitlement to benefits under the legislation of the other Contracting State, the following rules shall apply:

a) If the person concerned has not been employed in the territory of the last-mentioned State in an occupation to which the occupational disease or the aggravation thereof may be attributed, the competent institution of the first-mentioned State shall remain responsible for the benefits under its own legislation, account being taken of such aggravation.

b) If the person concerned has been employed in the territory of the last-mentioned State in such an occupation, the competent institution of the first-mentioned State shall remain responsible for furnishing the benefits under its own legislation, but no account shall be taken of the aggravation; the competent institution of the other Contracting State shall award the employed person a supplement, the amount of which shall be determined in accordance with the legislation of the said other State and shall be based on the difference between the degree to which he is incapable of earning after the aggravation and the degree to which he would have been incapable of earning if the disease as it existed before the aggravation had been contracted in its territory.

Article 28. 1. Benefits in kind due under the legislation concerning compensation for industrial accidents and occupational diseases may be provided to frontier workers either in the country of the place of work or in the country of permanent residence.

Nevertheless, the right of the victim of an industrial accident to receive appliances and benefits for the purpose of vocational rehabilitation may be exercised only in the country of the place of work and under the conditions laid down by the legislation applicable in that country.

2. If benefits in kind are provided in the country of the place of residence by the competent institution of that country, they shall be provided in accordance with the legislation that it applies and on behalf of the institution with which the worker is insured in the other country.

3. Cash benefits under the legislation concerning compensation for industrial accidents and occupational diseases shall be provided to frontier workers by the competent institution of the country of the place of work, unless the legislation of that country places this obligation on the employer.

4. Expenses incurred by the institution of the country of residence under this article shall be reimbursed by the institution with which the worker is insured, in accordance with the rates applied by the fund which provided the benefits.

Chapter V. FAMILY BENEFITS

Article 29. 1. French agricultural workers residing in Switzerland with their spouse or their children shall be treated as Swiss employed persons and eligible for the housekeeping allowances and child benefits provided for under Swiss federal legislation.

2. French agricultural workers whose children live outside of Switzerland shall be entitled, for the duration of their employment in Switzerland, to the child benefits provided for under the said legislation.

Article 30. 1. Swiss nationals exercising a paid occupation in France shall be subject to the French legislation concerning family benefits and entitled to such benefits under the same conditions as French nationals.

For the purposes of qualification for benefits, account shall be taken, in so far as necessary, of periods of employment previously completed under the Swiss scheme.

2. French or Swiss employed persons subject to French legislation shall be entitled, under the conditions of eligibility for benefits provided for under that legislation, to family allowances for their children resident in Switzerland.

The amount of such allowances is determined by the Administrative Agreement.

They shall be provided by the competent French institution direct to the person having custody of the children in Switzerland.

The right to allowances under this paragraph shall be suspended if benefits are also payable owing to the exercise of an occupation in Switzerland.

3. French or Swiss employed persons subject to French legislation under article 8, paragraph 1 (a), of this Convention shall be entitled, for members of their families accompanying them, to the family benefits provided for under French legislation, as specified in the Administrative Agreement.

TITLE V. MISCELLANEOUS PROVISIONS

Article 31. The competent authorities of the Contracting States:

- (a) Shall enter into such administrative agreements as may be required for the application of the present Convention and shall each designate liaison agencies;
- (b) Shall agree upon the measures to be adopted for mutual assistance and the apportionment of expenses for such medical and administrative investigations and experts' services as may be required for the application of the present Convention;
- (c) Shall communicate directly to each other information regarding any measure taken by them for the application of the present Convention;
- (d) Shall communicate directly to each other, as promptly as possible, information regarding any changes made in their national legislation and regulations in so

far as such changes might affect the application of the present Convention or administrative agreements;

- (e) Shall report to each other any difficulties which may arise, at the technical level, from the implementation of the provisions of this Convention or administrative agreements.

Article 32. 1. The administrative authorities and the competent institutions of each of the Contracting States shall assist each other in implementing this Convention as if their own legislation were in question, particularly with regard to the amicable collection of social security contributions payable to an institution of one State by a person resident in the territory of the other State.

In principle, such mutual assistance shall be free of charge; nevertheless, the competent authorities may agree on the reimbursement of certain costs.

2. Any exemption from or reduction of taxes, fees, stamp duties, court fees or registration fees provided for by the legislation of one Contracting State in respect of documents and papers required to be produced pursuant to the legislation of that State shall be extended to similar documents and papers required to be produced pursuant to the legislation of the other State.

3. Legalization by diplomatic or consular authorities shall be waived in respect of all deeds and documents required to be produced under this Convention.

4. For the purposes of the application of this Convention, the administrative authorities and competent institutions of each of the Contracting States shall communicate directly with each other and with the persons concerned or their agents.

Article 33. 1. Applications, declarations and appeals which must be presented within a prescribed time-limit to an administrative or judicial authority or a social security institution pursuant to the legislation of one of the Contracting Parties shall be admissible if they are filed within the same time-limit with a corresponding authority or institution of the other State. In such cases, the authority or institution of the last-mentioned State shall transmit such applications, declarations or appeals to the competent body of the first-mentioned State without delay.

2. Administrative and judicial authorities and competent institutions of one of the Contracting States may not refuse to accept applications and other documents for the reason that they are drawn up in an official language of the other State.

Article 34. 1. The social security institutions required to provide benefits under this Convention shall be deemed to discharge their liability validly in the currency of their country.

Amounts to be reimbursed under this Convention shall be paid in the currency of the country of the institution which provided the benefits at the rate of exchange in force on the day of settlement.

2. Notwithstanding any internal provisions relating to exchange regulations, the two Governments undertake not to obstruct in any way the free transfer of monies involved in all financial settlements connected with social security or social welfare operations, either under this Convention or under the internal legislation of each of the States concerning employed persons and self-employed

persons, particularly as relates to voluntary insurance and supplementary pension schemes.

Article 35. If a person is entitled to benefits under the legislation of either Contracting State for damage resulting from events that occurred in the territory of the other State, rights, if any, of the institution responsible for payment in respect of the third party liable for compensation for the damage shall be governed by the following provisions:

(a) Where the institution responsible for payment assumes by subrogation, under the legislation applied by it, the rights of the recipient in respect of the third party, the subrogation shall be recognized by the other Contracting State.

(b) Where the institution responsible for payment has a direct claim against the third party, the other Contracting State shall recognize that claim.

In the exercise of such subrogation or direct claim, the insuring institution of the first-mentioned State shall be deemed equivalent to the corresponding national institution.

Article 36. 1. Any difficulties relating to the application of the provisions of this Convention shall be resolved by direct agreement between the competent administrative authorities or, failing that, through the diplomatic channel.

2. Disputes relating to the interpretation of this Convention shall be resolved by the diplomatic channel.

Article 37. 1. Any dispute which cannot be resolved in accordance with the foregoing article shall be submitted, at the request of either Contracting State, to an arbitration tribunal, which shall be constituted as follows:

(a) Each State shall appoint an arbitrator within one month following the date on which the request for arbitration is received; the two arbitrators thus appointed shall choose, within two months following the communication of the State which last appointed its arbitrator, a third arbitrator, who shall be a national of a third State.

(b) If a State fails to appoint an arbitrator within the prescribed period, the other State may request the President of the European Court of Human Rights to make the appointment. The same procedure shall be followed, at the request of either State, where the two arbitrators are unable to agree on the choice of the third arbitrator.

2. The arbitration tribunal shall itself determine its rules of procedure; it shall act by majority vote and its decisions shall be binding on both States.

3. Each Contracting State shall defray the expenses of the arbitrator appointed by it. The other expenses shall be borne equally by the two States.

TITLE VI. TRANSITIONAL AND FINAL PROVISIONS

Article 38. 1. This Convention shall also apply to insurance contingencies which materialized before its entry into force, provided that:

a) With respect to invalidity insurance, no entitlement shall exist unless, when the Convention enters into force, the applicant is still resident in the territory of the State in which the invalidity occurred, and, in the case of frontier workers, entitlement shall exist if the invalidity came into being less than 12 months before the entry into force of the Convention;

b) Annuities under Swiss insurance against non-industrial accidents may not be awarded to the parents, grandparents, brothers or sisters of the insured person in respect of insurance contingencies which materialized before 1 January 1948.

2. This Convention confers no right to benefits for a period prior to the date of its entry into force.

3. Any insurance period or period treated as such and any period of residence completed under the legislation of either Contracting State before the date of the entry into force of the present Convention shall be taken into account for the purpose of determining entitlement to benefits under this Convention.

4. This Convention shall not apply to rights which have been settled by the award of a lump-sum payment or the refund of contributions.

Article 39. Swiss ordinary old-age and survivors' insurance annuities shall be paid under this Convention only if the insurance contingency materialized after 31 December 1959 and provided that the contributions were not refunded under article 5, sub-paragraph (d), of the Convention between France and Switzerland of 9 July 1949. Claims which French nationals may assert for insurance contingencies which materialized before 1 January 1960 shall continue to be governed by article 5 of the said Convention of 9 July 1949.

Article 40. The rights of persons whose pensions or annuities were determined before the date of entry into force of this Convention shall be reviewed at their request, account being taken of the provisions of this Convention. Such rights may also be reviewed *ex officio*. Under no circumstances shall the effect of such a revision be to reduce the previous rights of the person concerned.

Article 41. Where the provisions of the applicable legislation constitute an obstacle to the satisfaction of claims by reason of the nationality or residence of the person concerned and this Convention eliminates that obstacle, the time-limits for asserting claims and the time-limits for barring under the statute of limitations prescribed by the respective laws of the Contracting States shall be reckoned starting from the date of the entry into force of this Convention at the earliest.

Article 42. The Final Protocol annexed to this Convention shall form an integral part thereof.

Article 43. 1. The Government of each Contracting State shall notify the other of the completion of the constitutional procedures required by it for the entry into force of this Convention. This Convention shall enter into force on the first day of the second month following the date of the latter of such notifications.

2. Subject to the provisions of article 39 of this Convention, the Convention between France and Switzerland of 9 July 1949 shall be abrogated as from the date of entry into force of this Convention.

The persons covered by the Convention of 9 July 1949 shall suffer no loss as a result of its abrogation and shall be automatically entitled to the benefits provided for under this Convention.

3. This Convention shall not affect either the Convention Governing the Status, with Regard to Family Allowance Laws, of Certain Swiss Nationals

Having Farms in French Territory, of 24 September 1958,¹ or the Convention Governing the Status, with Regard to Family Allowance Laws, of Wage-earning Frontier Workers at the Franco-Genevese Border, of 16 April 1959.²

Article 44. 1. This Convention shall remain in force for a period of one year. Thereafter, it shall continue in force by tacit extension of the period of validity from year to year unless it is denounced by either Contracting State at least three months before the expiry of the current period of validity.

2. In the event of denunciation of this Convention, any right acquired in accordance with its provisions shall be maintained. The settlement of any rights then in course of acquisition shall be the subject of agreements between the competent authorities of the two Contracting States.

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

DONE at Berne, in duplicate, on 3 July 1975.

For the Government of the French Republic:

[Signed]

B. DUFOURNIER

For the Swiss Federal Council:

[Signed]

C. MOTTA

FINAL PROTOCOL

At the time of signing the Convention on Social Security between the French Republic and the Swiss Confederation (hereinafter referred to as the Convention), the undersigned declare that the Contracting States have reached an agreement on the following:

1. The Convention does not derogate from the provisions of the Agreement concerning the Social Security of Rhine Boatmen concluded at Paris on 27 July 1950³ and revised at Geneva on 13 February 1961.⁴

For the purpose of any claim to receive an ordinary annuity under Swiss invalidity insurance, Swiss and French nationals who had been employed as Rhine boatmen on a Swiss vessel or were taken aboard a ship flying the Swiss flag as seafarers and who were obliged to abandon such employment because of incapacity for work shall be treated as remaining insured for a further 12 months after the end of their employment.

2. The Convention shall also apply to refugees within the meaning of the International Convention relating to the Status of Refugees of 28 July 1951⁵

¹ See p. 49 of this volume.

² See p. 55 of this volume.

³ United Nations, *Treaty Series*, vol. 166, p. 73.

⁴ *Ibid.*, vol. 717, p. 3.

⁵ *Ibid.*, vol. 189, p. 137.

and the Protocol relating to the Status of Refugees of 31 January 1967¹ and to stateless persons within the meaning of the Convention relating to the Status of Stateless Persons of 28 September 1954,² where they reside in the territory of one of the Contracting States. It shall apply, subject to the same conditions, to members of their families and to their survivors in so far as they base their rights on those of the above-mentioned refugees or stateless persons. More favourable provisions of national legislation shall not be affected.

3. (a) It is hereby stated that, as relates to insurance against working accidents in agriculture, French agricultural workers shall enjoy the same treatment as Swiss workers and that benefits to which they have become entitled shall be paid to them without restriction even when they are not resident in Switzerland.

(b) It is hereby stated that, in accordance with the Federal Sea Navigation Act, French seafarers sailing under the Swiss flag shall be subject to the provisions of that Act relating to insurance against working accidents and sickness and shall be granted the benefit thereof under the same conditions as Swiss seafarers, and that benefits to which they have become entitled shall be paid to them without restriction even when they are not resident in Switzerland.

4. In the cases referred to in article 8, paragraph 1 (c), of the Convention, the transport enterprises of either Contracting State shall indicate to the competent agency of the other State those workers who are sent on a non-permanent basis, subject to the agreement of the said persons.

5. Persons of Swiss nationality who are employed in France by the Swiss National Tourist Office shall be treated as persons belonging to an official administrative department, within the meaning of article 8, paragraph 1 (d), of the Convention.

6. For the purposes of articles 11 and 12, the term "resident" means habitually abiding.

7. French nationals resident in Switzerland who leave Switzerland for a period of not more than two months shall be deemed not to have discontinued their residence in Switzerland within the meaning of article 12 of the Convention.

8. The provisions of the Convention concerning administrative and medical mutual assistance and article 24 shall also apply to non-industrial accidents occurring in the territory of one of the Contracting States and covered by the competent insuring institution of the other State under conditions to be established in an administrative agreement.

9. Obtaining Swiss sickness insurance shall be facilitated as follows:

(a) Where a national of one of the Contracting States transfers his residence from France to Switzerland and is no longer covered by French sickness insurance, he shall be insured, regardless of his age, by one of the recognized Swiss sickness funds designated by the competent Swiss authority and may take out insurance for daily compensation as well as for medical and pharmaceutical care, provided that:

—He satisfies the other statutory requirements for eligibility;

¹ United Nations, *Treaty Series*, vol. 606, p. 267.

² *Ibid.*, vol. 360, p. 117.

- He was insured with a French sickness insurance institution before his transfer of residence;
- He applies to a Swiss fund for insurance within three months following the cessation of his insurance in France; and
- He is not changing residence solely for the purpose of undergoing medical or curative treatment.

(b) The members of the family of a national of one of the Contracting States, who are beneficiaries of the insured person in accordance with French legislation, shall be equally eligible for insurance, for medical and pharmaceutical treatment, with a recognized sickness insurance fund, provided that they satisfy the conditions set forth above, the capacity of beneficiary being treated the same as that of the insured person.

(c) Insurance periods completed under French sickness insurance shall be taken into account for the purposes of eligibility for benefits, provided, however, as relates to maternity benefits, that the person concerned has been insured for three months with the Swiss sickness insurance fund.

10. For the purposes of entitlement to sickness insurance benefits under the French compulsory or optional scheme:

(a) Insurance periods with a recognized Swiss insurance fund shall be taken into account, in so far as necessary, provided that the aggregated periods do not overlap:

- For the purposes of eligibility for benefits in kind and in cash, if the Swiss insurance covered medical and pharmaceutical treatment and daily compensation;
- For the purposes of eligibility for benefits in kind only, if the Swiss insurance covered only medical and pharmaceutical treatment.

(b) The provisions contained in (a) shall apply to maternity insurance.

11. In the event that legislative changes so permit, the possibility of supplementing the Convention with provisions instituting co-ordination between the sickness insurance schemes referred to in points 9 and 10 above shall be examined, with a view, in particular, to the provision of benefits.

12. The Convention shall not apply to the supplementary pension insurance schemes provided for under French legislation or to future Swiss federal legislation on occupational provident schemes.

DONE at Berne, on 3 July 1975, in duplicate.

For the Government of the French Republic:

[Signed]

B. DUFOURNIER

For the Swiss Federal Council:

[Signed]

C. MOTTA

[TRANSLATION — TRADUCTION]

SPECIAL PROTOCOL¹ RELATING TO NON-CONTRIBUTORY BENEFITS UNDER INVALIDITY, OLD-AGE AND SURVIVORS' INSURANCE

At the time of signing the Convention on Social Security between the French Republic and the Swiss Confederation of 3 July 1975,² the undersigned agreed as follows:

I. ON THE SWISS SIDE

Article 1

1. French nationals shall be entitled to extraordinary annuities under Swiss old-age and survivors' insurance and invalidity insurance under the same conditions as Swiss nationals so long as they maintain their domicile in Switzerland, and:

(a) As relates to old-age annuities, provided that they have also:

- Been resident in Switzerland for at least 10 years without interruption immediately prior to the application for the annuity;
- Or been resident in Switzerland for at least 15 years, including one year immediately preceding the application;
- Or, where an old-age annuity replaces a survivors' or invalidity annuity, been resident in Switzerland without interruption for five years prior to the application;

(b) As relates to survivors' annuities, provided that they have also been resident in Switzerland without interruption:

- Either for at least five years immediately prior to the application for the annuities;
- Or for at least 15 years including one year immediately preceding the application;

(c) As relates to invalidity annuities, provided that they have been resident in Switzerland for at least five years without interruption immediately prior to the application for the annuities.

2. Where French nationals resident in Switzerland leave Switzerland for a maximum period of three months per calendar year, this shall not be considered an interruption of their residence in Switzerland within the meaning of the preceding paragraph. However, periods during which French nationals resident in Switzerland have been exempt from insurance under Swiss old-age and survivors' insurance and invalidity insurance schemes shall not be taken into account for the completion of the time-limits referred to in the said paragraph.

¹ Came into force on 1 November 1976, i.e., the date of the entry into force of the Convention on Social Security, in accordance with article 5.

² See p. 86 of this volume.

3. The reimbursement, prior to the entry into force of this Special Protocol, of contributions paid to Swiss old-age and survivors' insurance shall not preclude the granting of extraordinary annuities under paragraph 1 of this article; in such cases, however, the amount of the reimbursed contributions shall be deducted from the amount of the annuities to be paid.

II. ON THE FRENCH SIDE

Article 2

1. *Old-age allowance for employees.* The old-age allowance for employees shall be awarded, on the conditions laid down by French legislation concerning elderly employed persons, to elderly Swiss employed persons of insufficient means who show proof, on the day on which they claim the allowance, of 15 years of residence in France, including at least one year of uninterrupted residence immediately preceding the application.

2. *Old-age allowance for self-employed persons.* Swiss nationals who have engaged as self-employed persons in France in an occupation covered by the old-age allowance scheme provided for in the Social Security Code, book VIII, part I, and who have never contributed to the said scheme shall receive the non-contributory old-age allowance for self-employed persons on the same terms as French nationals, provided that they show proof, in France, of residence for a total of 15 years including at least one year without interruption immediately preceding the claim for benefits.

3. *Special allowance.* Swiss nationals shall receive the special allowance provided for in the Social Security Code, book VIII, part II, on the same conditions as French nationals, provided that they show proof, in France, of residence for a total of 15 years including at least one year without interruption immediately preceding the claim for benefits.

4. *Supplementary allowance from the National Mutual Aid Fund.* Swiss nationals in receipt of an old-age or invalidity benefit under any of the legislation referred to in article 2, A, of the General Convention on Social Security of 3 July 1975 or any of the benefits referred to in paragraphs 1, 2 and 3 of this article shall be entitled to the supplementary allowance under the conditions laid down for French nationals.

5. Payment of the allowances referred to in paragraphs 1, 2, 3 and 4 of this article shall cease when the recipients leave French territory.

III. COMMON PROVISIONS

Article 3

For the purposes of applying the means requirements laid down by the legislation of either of the States, the competent authorities and institutions of the other State shall assist with a view to:

- (a) Ascertaining what means may be available to applicants, including lifetime benefits under the social security scheme and, to that end, undertaking any inquiry or investigation in the manner laid down by social security legislation;
- (b) Evaluating property owned by the applicants;

(c) Using their good offices, if appropriate, with persons who are responsible for supporting the applicants in question.

The competent authorities may designate an institution to receive requests submitted for this purpose.

IV. FINAL PROVISIONS

Article 4

- Protocol n° 1 relating to the Old-age Allowance for Employees and the Temporary Old-age Allowance under French Legislation and to Temporary Annuities under the Swiss Federal Legislation on Old-age and Survivors' Insurance, signed at Paris on 9 July 1949,¹
- Protocol n° 2 concerning Old-age Allowances under French Legislation, signed at Paris on 1 June 1957,¹
- Protocol n° 3 relating to the Supplementary Allowance under the French Law of 30 June 1956 Instituting a National Mutual Aid Fund, signed at Paris on 15 April 1958,¹ and
- The Supplementary Agreement to Protocol n° 3, signed at Paris on 14 April 1961,¹

are abrogated as from the date of entry into force of this Special Protocol.

Article 5

This Special Protocol shall enter into force on the same day as the Convention on Social Security between the French Republic and the Swiss Confederation of 3 July 1975; it shall be approved and shall remain in force for the same duration as the Convention.

DONE at Berne, on 3 July 1975, in duplicate.

For the Government of the French Republic:

[Signed]

B. DUFOURNIER

For the Swiss Federal Council:

[Signed]

C. MOTTA

¹ See p. 16 of this volume.