

No. 18839

UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY

**Agreement on social security (with final protocol). Signed at
Washington on 7 January 1976**

**Administrative Agreement for the implementation of the
above-mentioned Agreement. Signed at Washington
on 21 June 1978**

Authentic texts: English and German.

Registered by the United States of America on 30 May 1980.

ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

**Accord relatif à la sécurité sociale (avec protocole final).
Signé à Washington le 7 janvier 1976**

**Accord administratif pour l'application de l'Accord susmen-
tionné. Signé à Washington le 21 juin 1978**

Textes authentiques : anglais et allemand.

Enregistrés par les États-Unis d'Amérique le 30 mai 1980.

AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

The United States of America and the Federal Republic of Germany,
Being desirous of regulating the relationship between them in the area of
social security,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. For the purpose of this Agreement

1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards the Federal Republic of Germany, the area in which the Basic Law (*Grundgesetz*) of the Federal Republic of Germany is in force;

2. "Laws" means the laws and regulations concerning the systems of social security specified in article 2, paragraph 1;

3. "Competent Authority" means, as regards the United States of America, the Secretary of Health, Education and Welfare, and as regards the Federal Republic of Germany, the Federal Minister of Labor and Social Affairs (*Bundesminister für Arbeit und Sozialordnung*);

4. "Agency" (*Träger*) means the institution or authority responsible for implementing laws specified in article 2, paragraph 1;

5. "Competent Agency" means the agency responsible for applying the laws in a specific case;

6. "Employment" means employment or self-employment as defined by the applicable laws;

7. "Period of coverage" (*Versicherungszeit*) means a period of payment of contributions or a period of earnings from employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

8. "Benefit" (*Rente*) means an old-age, dependent, survivor, or disability insurance benefit provided by the applicable laws;

9. "Cash benefit" (*Geldleistung*) means a benefit (*Rente*) and any other cash payment provided by the applicable laws; and

10. "Benefit-in-kind" (*Sachleistung*) means a rehabilitation benefit-in-kind provided by the applicable laws.

¹ Came into force on 1 December 1979, i.e., the first day of the second month following the month in which took place, at Bonn, the exchange of the instruments of ratification, in accordance with article 23 (1) and (2).

Article 2. 1. For the purpose of this Agreement, the applicable laws are:

- (a) As regards the Federal Republic of Germany, laws governing
- Wage Earners' Pension Insurance
 - Salaried Employees' Pension Insurance
 - Miners' Pension Insurance
 - Steelworkers' Supplementary Pension Insurance
 - Farmers' Old Age Benefits; and
- (b) As regards the United States of America, laws governing the Federal Old-Age, Survivors and Disability Insurance Program.

2. Laws within the meaning of paragraph 1 of this article shall not include laws resulting for one Contracting State from other international treaties or supranational legislation, or from laws promulgated for their implementation.

Article 3. Unless otherwise provided, the present Agreement shall apply to:

- (a) Nationals of a Contracting State within the meaning of article XXV, paragraph 6, of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany of October 29, 1954, and of paragraph 22 of the Protocol thereto,¹ with the proviso that henceforth the term "Certificate of Residence" (*Heimatschein*) shall be replaced by the term "Certificate of Nationality" (*Staatsangehörigkeitsausweis*),
- (b) Refugees within the meaning of article 1 of the Convention on the Status of Refugees dated July 28, 1951,² and the Protocol to that Convention dated January 31, 1967,³
- (c) Stateless persons within the meaning of article 1 of the Convention on the Status of Stateless Persons dated September 28, 1954,⁴
- (d) Other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or a stateless person within the meaning of this article, and
- (e) Nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this article.

Article 4. 1. Unless otherwise specified in the present Agreement, the persons designated in article 3(a), (b), (c) and (d) who ordinarily reside in the territory of either Contracting State shall in the application of the laws of one Contracting State receive equal treatment with the nationals of that Contracting State.

2. Nationals of one Contracting State who ordinarily reside outside of the territories of both Contracting States shall be granted the cash benefits and benefits-in-kind provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who ordinarily reside outside of the territories of both Contracting States.

¹ United Nations, *Treaty Series*, vol. 273, p. 3.

² *Ibid.*, vol. 189, p. 137.

³ *Ibid.*, vol. 606, p. 267.

⁴ *Ibid.*, vol. 360, p. 117.

Article 5. Unless otherwise provided in this Agreement, the laws of one Contracting State which require that entitlement to or payment of cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to the persons designated in article 3(a), (b), (c) and (d) who ordinarily reside in the territory of the other Contracting State.

Article 6. 1. Except as otherwise provided in this article, persons who have employment within the territory of one of the Contracting States shall be subject to the laws on compulsory coverage of only that Contracting State even when the employer is located in the territory of the other Contracting State.

2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (*Zweigniederlassung*) in the territory of the Contracting State of employment.

3. In the case of the employment of a person as an officer or member of a crew of a sea-going vessel which has been granted the right to fly the flag of the Federal Republic of Germany, a German aircraft, an American vessel, an American aircraft, a vessel which has been granted the right to fly the flag of the Federal Republic of Germany and is at the same time an American vessel under United States laws, or of an aircraft which is a German aircraft but which is treated as an American aircraft under United States laws, the following rules shall apply with regard to the laws on compulsory coverage:

- (a) If the person is subject to the laws of only one of the Contracting States, he shall remain subject to those laws.
- (b) If the person is a national of one of the Contracting States and subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State of which he is a national.
- (c) (1) If the person is a national of both Contracting States or is a member of a group specified in article 3(b), (c) or (e) and is subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State in whose territory he ordinarily resides.
(2) If he does not ordinarily reside in the territory of either Contracting State, he and his employer may apply for an exemption from the laws on compulsory coverage of one of the Contracting States under the procedure provided in paragraph 5 of this article.
- (d) A person who is a national of one Contracting State employed on the vessel or aircraft of the other Contracting State and who is not otherwise subject to the laws on compulsory coverage of either Contracting State shall be subject to the laws on compulsory coverage of the other Contracting State.

4. (a) A national of one of the Contracting States employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(b) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he does not ordinarily reside, by an employee of the first Contracting State who is a national of the first Con-

tracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(c) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he ordinarily resides, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the other Contracting State.

5. Upon application of a person specified in the preceding paragraphs of this article, except paragraph 3(c) (2), and his employer, or upon application of a self-employed person, the Competent Authority of the Contracting State from whose laws on compulsory coverage the exemption is desired may grant the exemption, if the person and his employer, or the self-employed person, will be subject to the laws on compulsory coverage of the other Contracting State.

PART II. BENEFIT INSURANCE SYSTEM

Article 7. 1. Where periods of coverage have been completed under the laws of both Contracting States, the Agency which determines the entitlement to cash benefits and benefits-in-kind under its laws shall take account of periods of coverage which are creditable under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its own laws.

2. This Agreement shall not result in entitlement to a benefit under the laws of a Contracting State unless a minimum period of coverage has been completed by a person under its laws and the completed period of coverage alone does not result in entitlement to benefits. In the application of United States laws, periods of coverage totaling 6 quarters of coverage shall be the required minimum, and, in the application of German laws, periods of coverage totaling 18 months shall be the required minimum.

3. Where a person's periods of coverage are less than the minimum period required by paragraph 2 of this article under the laws of one Contracting State, those periods of coverage, whether or not consecutive, shall nevertheless be considered by the Agency of the other Contracting State for purposes of the computation of a benefit, as if they were periods of coverage under its own laws, provided that

- (a) The person has the minimum period required by paragraph 2 under the laws of the other Contracting State and has entitlement for benefits with or without the application of paragraph 1 of this article under the laws of the other Contracting State, or
- (b) The person is entitled to benefits under the laws of the other Contracting State with less than the minimum period required by paragraph 2.

Article 8. The following provisions shall apply to the Federal Republic of Germany:

- 1. The periods of coverage to be considered in accordance with article 7 shall be taken into account by the insurance system whose Agency is competent for determining a person's benefit if only the German laws were applied. If under this provision the Competent Agency is the Miners' Pension Insurance system, the periods of coverage completed under United States laws shall be taken

- into account by the Miners' Pension Insurance system if the periods were completed underground in a mine.
2. Periods of coverage completed under United States laws which are to be considered by the Competent Agency for the computation of the benefit payable by it, in accordance with article 7, paragraph 3, shall only increase the number of creditable insurance years under German laws.
 3. In determining the benefit computation base (*Rentenbemessungsgrundlage*), only periods of coverage considered under German laws shall be taken into account.
 4. If the requirements for entitlement to a benefit are met only by applying the provisions of article 7, paragraph 1, only half of the benefit amount which is attributable to deemed periods of coverage (*Zurechnungszeit*) shall be payable.
 5. The following rules shall apply where an amount is payable as a supplement to a child; these rules shall also apply if the child's supplement is an integral part of the orphan's pension:
 - (a) If a supplement is payable under German laws without the application of article 7, paragraph 1, but no child's insurance benefit is payable under United States laws, the supplement shall be payable in full.
 - (b) If a supplement is payable under German laws with or without the application of article 7, paragraph 1, and a child's insurance benefit is payable under United States laws, one-half of the supplement shall be payable.
 - (c) If a supplement is payable under German laws only with the application of article 7, paragraph 1, and no child's insurance benefit is payable under United States laws, one-half of the supplement shall be payable.
 6. For purposes of terminating the right to the compensatory cash benefit for a miner who has been separated from his mining occupation (*Knappschaftsausgleichsleistung*), a United States mining establishment shall be treated as equivalent to a German mining establishment.
 7. In the case of a self-employed craftsman, whose liability status for compulsory coverage is conditional upon payment of a minimum number of contributions, periods of coverage completed under United States laws shall be taken into account to determine whether the craftsman is liable.

Article 9. The following provisions shall apply to the United States of America:

1. Where there is eligibility for a benefit under United States laws by applying article 7, paragraph 1, the Competent Agency shall first compute a theoretical Primary Insurance Amount taking into consideration the periods of coverage completed under the laws of the two Contracting States as if all these periods of coverage had been completed under United States laws. The Competent Agency shall then compute a *pro rata* Primary Insurance Amount based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Any benefits payable under United States laws on the basis of an earnings record where a *pro rata* Primary Insurance Amount has been

- computed will be paid on the basis of that *pro rata* Primary Insurance Amount.
2. Periods during which a person was determined by a Competent German Agency to be totally disabled under German laws shall, when it is to his advantage, be excluded in determining whether he meets the insured status requirements under United States laws and in computing a Primary Insurance Amount under this Agreement.
 3. For the purposes of computing a person's theoretical Primary Insurance Amount, the Competent Agency shall take into account, if it is to his advantage, his earnings in any year during periods of coverage completed under German laws, as if they had been completed under United States laws.

PART III. MISCELLANEOUS PROVISIONS

Chapter 1. ADMINISTRATIVE COOPERATION

Article 10. The Competent Authorities, Agencies and associations of the Agencies of the Contracting States shall assist each other in applying this Agreement and in implementing each other's laws as if they were applying their own laws. This assistance shall be free of charge subject to exceptions to be agreed upon by the Contracting States.

Article 11. 1. A final decision of a Court or a ruling by a Competent Authority or an Agency of a Contracting State, concerning a matter arising under its laws, which is enforceable under its laws, shall be recognized by the other Contracting State. A Contracting State may refuse recognition if the decision or ruling is contrary to its public policy including its requirements for due process of law.

2. The final decisions and rulings referred to in paragraph 1 shall be enforced under the laws specified in article 2, paragraph 1, in the territory of the Contracting State in which the decisions or rulings are recognized.

Article 12. 1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an Agency of the other Contracting State in accordance with its laws.

2. A document or a copy of a document certified as authentic which is accepted as authentic by the Competent Authority or an Agency of one Contracting State shall be accepted as authentic by the Competent Authority or an Agency of the other Contracting State without further certification.

Article 13. 1. The Competent Authorities and the Agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

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

Article 14. 1. An application in writing or other document presented to the Competent Authority or an Agency of a Contracting State shall have the same effect as if it were presented to the Competent Authority or an Agency of the other Contracting State.

2. A person who files an application for cash benefits under the laws of a Contracting State may request that it not be treated as an application for cash benefits under the laws of the other Contracting State, or that it be effective on a different date in the other Contracting State, within the limitations of and in conformity with the laws of the other Contracting State.

Article 15. The consular officers of a Contracting State at diplomatic or consular posts in the territory of the other Contracting State, at the request of a person who is a national of the first Contracting State, may take measures necessary to safeguard and maintain the rights of that person. The person's authorization need not be proven.

Chapter 2. IMPLEMENTATION OF THE AGREEMENT

Article 16. 1. The Competent Authorities of the Contracting States shall, by mutual agreement, establish administrative procedures which are required to implement this Agreement. They shall inform each other of any amendments or additions to their laws.

2. Liaison agencies designated for the implementation of this Agreement are:

(a) In the Federal Republic of Germany:

- (1) For the Wage Earners' Pension Insurance system, the Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Institution for Hamburg), Hamburg,
- (2) For the Salaried Employees' Pension Insurance system, the Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Salaried Employees), Berlin,
- (3) For the Miners' Pension Insurance system, the Bundesknappschaft (Federal Miners' Insurance Institution), Bochum, and
- (4) For the Steelworkers' Supplementary Pension Insurance system, the Landesversicherungsanstalt für das Saarland (Regional Insurance Institution for the Saarland), Saarbrücken;

(b) In the United States of America: the Social Security Administration.

Article 17. An Agency of a Contracting State may validly pay cash benefits to a person in the territory of the other Contracting State in the currency of its own State or of the other Contracting State. If the cash benefits are paid in the currency of the other Contracting State, the currency conversion shall be at the exchange rate in force on the day the remittance is made.

Article 18. 1. (a) Where a German Agency has made an overpayment of cash benefits to a person, the amount of the overpayment may be withheld for the account of the German Agency by the United States Agency from a cash benefit payable by it on the earnings record of the same person, within the limits of the United States laws.

(b) In case of payment of an advance or provisional cash benefit to a person by a German Agency which is more than the amount due, the United States Agency shall withhold for the account of the German Agency an amount equal to the excess amount paid from any cash benefits payable by it on the earnings record of this same person.

2. (a) Where the United States Agency has made an overpayment of cash benefits on the earnings record (*Versicherungskonto*) of a person, the amount of the overpayment may be withheld for the account of the United States Agency by a German Agency from a cash benefit payable by it to the same person, within the limits of the German laws.

(b) In case of payment of an advance or provisional cash benefit on the earnings record (*Versicherungskonto*) of a person by the United States Agency which is more than the amount due, a German Agency shall withhold for the account of the United States Agency an amount equal to the excess amount paid from any cash benefits payable by it to the same person.

Article 19. 1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities it shall, at the request of either Contracting State, be submitted for arbitration in accordance with the following procedures:

- (a) An arbitration board shall be established on an *ad hoc* basis with each Contracting State appointing one member, and both members agreeing on a citizen from a third North Atlantic Treaty Organization member state as chairman who shall be appointed by the governments of the two Contracting States. The members shall be appointed within two months, and the chairman within three months, after one Contracting State has informed the other that it will refer the dispute to an arbitration board.
- (b) If the deadlines mentioned in paragraph 2(a) are not met, each Contracting State may, in the absence of other agreements, ask the Secretary General of the North Atlantic Treaty Organization to make the necessary appointments. If the Secretary General is a national of one of the Contracting States or is prevented from acting for another reason, the Deputy Secretary General shall make the appointments. In case the Deputy Secretary General also is a national of one of the two Contracting States or is prevented from acting for another reason, the next Assistant Secretary General following in rank by protocol who is not a national of one of the two Contracting States and who is not prevented from acting for another reason, shall make the appointments.
- (c) The arbitration board shall make its decision by majority vote on the basis of the agreements existing between the parties and general international law. Its decisions shall be binding on both Contracting States. Each Contracting State shall bear the cost for its member, as well as for its representation in the proceedings before the arbitration board; the cost for the chairman as well as other expenses shall be shared equally between the Contracting States. The arbitration board can make a different decision concerning the allocation of expenses. In all other respects the arbitration board shall establish its own rules of procedure.

PART IV. TRANSITIONAL AND FINAL PROVISIONS

Article 20. 1. This Agreement shall not establish any claim to payment of cash benefits for any period before its entry into force.

2. In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant under the laws occurring before the entry into force of this Agreement.

3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

4. Cash benefits to which there was entitlement before the entry into force of this Agreement may be recomputed under its provisions. At least the amount of the cash benefits previously payable shall continue to be payable after the recomputation.

Article 21. The attached Final Protocol shall form an integral part of this Agreement.

Article 22. This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 23. 1. This Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.

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

Article 24. 1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of cash benefits acquired under it shall be retained; rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and affixed thereto their seals.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

For the United States of America:

[Signed — Signé]¹

For the Federal Republic of Germany:

[Signed — Signé]²

[Signed — Signé]³

¹ Signed by David Matthews — Signé par David Matthews.

² Signed by von Staden — Signé par von Staden.

³ Signed by Walter Arendt — Signé par Walter Arendt.

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between the United States of America and the Federal Republic of Germany, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to article 1, paragraph 2, of the Agreement:

The term "laws" shall include the regulations adopted by the German Agencies (*Träger*) relating to the systems of social security specified in article 2, paragraph 1, of the Agreement.

2. With reference to article 2 of the Agreement:

- (a) Regarding article 2, paragraph 1(b), of the Agreement, with respect to the United States of America, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program are title II of the Social Security Act of 1935, as amended, and regulations promulgated under the authority provided therein, except sections 226 and 228 of that title and regulations pertaining to those sections, and chapter 2 and chapter 21 of the Internal Revenue Code of 1954 as amended.
- (b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Benefit system of the Federal Republic of Germany.
- (c) If under the laws of one of the Contracting States the requirements for the application of another Convention or a supranational regulation are fulfilled in addition to the requirements for the application of this Agreement, the Agency of this Contracting State shall disregard the other Convention or supranational regulation when applying this Agreement.
- (d) Article 2, paragraph 2, of the Agreement and paragraph 2(c) of this Protocol shall not apply if the social security laws resulting for the Federal Republic of Germany from international treaties or supranational law or designed to implement such treaties or law contain provisions relating to the apportionment of insurance burdens.

3. With reference to article 4 of the Agreement:

- (a) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.
- (b) German laws which guarantee participation of the insured and of the employers in the organs of self-government of the Agencies and of their associations as well as in the adjudication of social security matters shall remain unaffected.

4. With reference to article 5 of the Agreement:

- (a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall remain unaffected.
- (b) German laws concerning the granting of medical, occupational and supplementary rehabilitation measures by the Agencies of the Pension Insurance system shall remain unaffected.
- (c) Article 5 of the Agreement shall also apply to United States laws under which payment of cash benefits is made dependent on physical presence in the territory of the United States.

5. With reference to article 6 of the Agreement:
 - (a) Article 6 of the Agreement shall also apply to persons who are treated as employees under the laws specified in article 2, paragraph 1(a), of the Agreement.
 - (b) Article 6, paragraph 4, of the Agreement shall apply to an employee of any German public employer.
 - (c) With respect to the United States of America, the term "employed by that Contracting State" in article 6, paragraph 4(a), of the Agreement shall mean employed by the Federal Government or one of its instrumentalities, and the term "employee of the first Contracting State" in article 6, paragraph 4(b) and (c), of the Agreement shall mean an employee of the Federal Government or one of its instrumentalities.
 - (d) Article 6, paragraph 5, of the Agreement shall not apply to exemptions from United States laws of United States nationals who ordinarily reside in the territory of the United States of America.
6. With reference to article 7 of the Agreement:
 - (a) Periods of coverage completed under United States laws shall not be taken into account for the grant of increments (*Leistungszuschlag*) provided under German laws governing the Miners' Pension Insurance system.
 - (b) Under German pension insurance, article 7, paragraph 1, of the Agreement shall apply *mutatis mutandis* to cash benefits and benefits-in-kind which may be granted at the discretion of the Agency.
 - (c) Notwithstanding article 7, paragraph 3, of the Agreement, the United States Agency shall not be required to take account of periods of coverage completed under German laws in the case of any person who is entitled to transitional benefits on the basis of section 227 of the United States Social Security Act.
7. With reference to article 8 of the Agreement:
 - (a) Where under German laws the receipt of a benefit entails exemption from compulsory insurance and preclusion from voluntary insurance, receipt of a corresponding benefit under the laws of the United States shall have the same effect.
 - (b) United States nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be eligible for voluntary insurance in the German pension insurance system if they have validly paid contributions for at least 60 months to this system or were eligible for voluntary insurance on the basis of transitional laws in force before October 19, 1972. This rule shall also apply to the persons specified in article 3(b) and (c) of the Agreement who ordinarily reside in the territory of the United States of America.
 - (c) Upon application United States nationals may pay voluntary contributions to the German pension insurance system retroactively, if eligibility for continued voluntary insurance was abolished by the laws governing voluntary insurance which entered into force on October 19, 1972, because they were either ordinarily residing or domiciled outside the territory of the Federal Republic of Germany. Retroactive voluntary contributions may be made for periods from October 19, 1972, to the day of the entry into force of the Agreement provided that these periods are not already covered by contributions paid to the German pension insurance system. Events relevant to eligibility for a benefit (*Eintritt des Versicherungsfalles*) which arise within one year after the entry into force of the Agreement shall not preclude payment of retroactive voluntary contributions. An application can be validly made only during the five-years' period following the date of entry into force of this Agreement. The Competent Agency may accept payments by installments for a period of up to three years.

- (d) United States nationals to whom contributions were refunded between October 19, 1972, and the date of entry into force of this Agreement, may repay such contributions upon application. Such repayment may only be made in the full amount of the contributions refunded; it shall have the effect of cancelling any entry of refund of contributions in the insurance recorded. Paragraph 7(c), the last three sentences shall apply accordingly.
8. In the implementation of the Agreement, German laws to the extent that they contain more favorable provisions for persons who have suffered damages because of their political attitude or because of their race, religion or ideology, shall remain unaffected.
- DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

For the United States of America:

[Signed — Signé]¹

For the Federal Republic of Germany:

[Signed — Signé]²

[Signed — Signé]³

¹ Signed by David Matthews — Signé par David Matthews.

² Signed by von Staden — Signé par von Staden.

³ Signed by Walter Arendt — Signé par Walter Arendt.

ADMINISTRATIVE AGREEMENT¹ FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976²

The Government of the United States of America and the Government of the Federal Republic of Germany,

In application of article 16.1 of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976,² hereinafter referred to as the "Agreement",

Have agreed as follows:

Article 1. For the purposes of the application of this Administrative Agreement, terms used in the Administrative Agreement shall have the meaning they have in the Agreement.

Article 2. The liaison agencies established under article 16.2 of the Agreement and the Competent Agencies referred to in the second sentence of article 3 of this Administrative Agreement with the participation of the Competent Authorities shall agree jointly upon uniform administrative measures, procedures, and forms for the implementation of the Agreement. The provisions of article 16.1 of the Agreement shall not be affected.

Article 3. Where German laws do not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance System shall be responsible within the scope of that system for the determination and award of cash benefits, with the exception of medical, occupational, and supplementary rehabilitation benefits, provided that:

- (a) Periods of coverage have been completed or are creditable under German and United States laws; or
- (b) The person eligible ordinarily resides in the territory of the United States of America; or
- (c) The person eligible is a United States national ordinarily residing outside the territories of both Contracting States.

The jurisdiction of the German special institutions (*Sonderanstalten*) shall not be affected.

Article 4. 1. The Agency of the Contracting State to whose laws on compulsory coverage a person will remain subject in accordance with article 6 of the Agreement shall issue to the person or his employer a certificate to that effect when requested to do so by the person or his employer:

- (a) In the Federal Republic of Germany that certificate shall be issued by the sickness insurance agency to which pension insurance contributions are paid;

¹ Came into force on 30 October 1979, i.e., the date on which both Governments had informed each other of the completion of the required constitutional procedures, with retroactive effect from 1 December 1979, the date of entry into force of the Agreement of 7 January 1976, in accordance with article 18.

² See p. 258 of this volume.

(b) In the United States of America the certificate shall be issued by the Social Security Administration.

2. In order to prove that a person is exempt from the laws on compulsory coverage of one Contracting State, it shall be necessary for the person or his employer to present the certificate referred to in paragraph 1 confirming that the person is subject to the laws on compulsory coverage of the other Contracting State.

3. Article 6.2 of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship, and the transfer is not expected to be permanent as evidenced by a contract or a written notice from the employer. In cases where the United States laws on compulsory coverage apply in accordance with article 6.2 of the Agreement, but there is no provision under United States laws for contributions with respect to such coverage, article 6.1 of the Agreement shall apply.

4. (a) In making a determination concerning an exemption from the laws on compulsory coverage of one Contracting State pursuant to article 6.3(c) (2) or article 6.5 of the Agreement, the nature and circumstances of the employment shall be taken into consideration. Before making the determination, the Competent Authority of the other Contracting State shall be given an opportunity to express an opinion; the opinion shall in particular address the issue of whether the person concerned and his employer will be made subject to the laws on compulsory coverage of the other Contracting State.

(b) With regard to the Federal Republic of Germany, if the person is not employed in its territory he shall be deemed to be employed at the place of his last previous employment. If the person was not employed previously in that territory, he shall be deemed to be employed at the place where the German Competent Authority has its seat.

(c) Subparagraphs (a) and (b) shall also apply to self-employed persons.

Article 5. 1. The crediting of earnings in any year by the United States Agency under article 9.3 of the Agreement for periods of coverage creditable under German laws shall be subject to the maximum creditable earnings limitation under United States laws for such year.

2. In applying the Agreement, the United States Agency shall take account of German periods of coverage occurring before 1937 or earnings based on such periods of coverage in accordance with United States laws.

3. (a) In determining eligibility for cash benefits under article 7.1 of the Agreement, the United States Agency shall credit one quarter of coverage for every three months of coverage certified as creditable by the German Competent Agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(b) In determining eligibility for cash benefits and benefits-in-kind under article 7.1 of the Agreement, the German Competent Agency shall credit three months of coverage for each quarter of coverage certified as creditable by the United States Agency to the extent that the months in any such quarter of coverage

do not coincide with periods of coverage already credited as periods of coverage under German laws.

4. Regarding article 7.3 of the Agreement, the United States Agency shall consider German periods of coverage which are less than the minimum required by article 7.2 of the Agreement only if the person is not eligible for a benefit under United States laws without considering such periods of coverage.

5. Article 9.2 of the Agreement shall only apply in cases where eligibility for a benefit under United States laws exists by applying article 7.1 of the Agreement.

6. Periods of coverage after the computation closing date provided in United States laws shall not be considered in determining the ratio referred to in article 9.1 of the Agreement.

7. In cases where the theoretical primary insurance amount is determined by reference to the table of benefits contained in section 215(a) of the United States Social Security Act or deemed to be contained in such section, a *pro rata* primary insurance amount which is not equal to one contained in column IV of that table may be rounded to the nearest primary insurance amount appearing in such column or, if the *pro rata* primary insurance amount is less than the minimum primary insurance amount in such column, to a primary insurance amount as set forth in a column of amounts below the minimum primary insurance amount down to the amount of \$1.00 in increments to be determined by the United States Competent Authority.

Article 6. 1. Benefits awarded by the United States Competent Agency under the provisions of part II of the Agreement shall be recomputed on its own motion to take into account additional periods of coverage completed under the laws of the United States of America. Benefits awarded by the United States Competent Agency under the provisions of part II of the Agreement shall be recomputed upon application to take into account additional periods of coverage credited under German laws. Such a recomputation shall be made in the same manner as an automatic recomputation in accordance with the laws of the United States of America.

The United States Competent Agency shall recompute benefits based on an earnings record if:

- (a) The additional earnings increase the theoretical primary insurance amount on which the current benefit is based, and
- (b) The total amount of the benefits payable by the United States Competent Agency based on the earnings record after the recomputation is more than the total payable without the recomputation.

Such recomputation shall not be processed or increase benefit amounts until after the close of the calendar year in which the additional periods of coverage are completed.

2. When an individual is already entitled to a benefit from the United States Competent Agency under part II of the Agreement and subsequently meets the requirements for receipt of a higher benefit amount from the United States Competent Agency without recourse to part II of the Agreement, the higher benefit amount shall become payable from the date that the requirements are met.

Article 7. 1. An application for cash benefits under the laws of one Contracting State shall also be treated as an application for cash benefits under the laws of the other Contracting State if the application indicates that periods of coverage under the laws of the other Contracting State are also alleged. Article 14.2 of the Agreement shall remain unaffected.

2. In the application of article 15 of the Agreement, additional requirements under national statutes for the protection of privacy and confidentiality of personal data shall remain unaffected.

Article 8. 1. In the application of article 14 of the Agreement, applications, appeals, statements, and documents necessary to establish eligibility shall be forwarded without delay by the Competent Agency of a Contracting State to which they have been presented to the liaison agency of the other Contracting State.

2. In the application of article 9 of the Agreement the following shall apply:

- (a) The German Competent Agency shall notify the United States Competent Agency upon its request of the amount of the person's covered earnings in any year during which periods of coverage were completed under German laws, together with a list of the months in the periods of coverage for which contributions were made. The amounts of earnings in a year to be reported by the German Competent Agency shall be derived from the contributions paid during periods of coverage in such year.
- (b) For substitute periods (*Ersatzzeiten*) creditable under German laws, the United States Competent Agency shall take into account earnings which, upon request of the United States Competent Agency, have been certified by the German Competent Agency and which have been determined based on the average gross annual earnings for the year in question of all persons who are covered under the Wage Earners' Pension Insurance System and the Salaried Employees' Pension Insurance System.
- (c) Excused periods (*Ausfallzeiten*) under German laws shall not be considered.

3. In accordance with procedures to be agreed upon pursuant to article 2, the agencies referred to in article 2 shall furnish each other available information or copies of documents relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in article 2.1 of the Agreement.

4. Each Agency shall be the final judge of the probative value of documentary evidence presented to it from whatever source. Article 12.2 of the Agreement shall not be affected by this provision.

5. The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number and total amount of benefits and commuted lump-sum payments, by type of benefit.

Article 9. The Agency of a Contracting State shall pay any cash benefits due to beneficiaries in the territory of the other Contracting State without recourse to a liaison agency of the other Contracting State.

Article 10. 1. Where administrative assistance is requested under article 10 of the Agreement, expenses, other than postage and regular personnel and operating costs of the Competent Authorities, Agencies, and associations of the Agencies providing the assistance, shall be reimbursed.

2. Where the Agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Contracting State in which the claimant or beneficiary resides at the expense of the Agency which requests the examination.

3. The Agency of either Contracting State shall furnish to the liaison agency of the other Contracting State at its request and without expense any medical information and documentation relevant to the disability of the claimant or beneficiary which may come into its possession.

Article 11. For the purpose of article 11.2 of the Agreement, the text of the decision or ruling must contain a certification by a body competent to issue such a certification testifying to its enforceability under the laws of the Contracting State in whose territory the certification was issued.

Article 12. For the purpose of article 13.1 of the Agreement, laws governing the recourse to interpreters shall not be affected. Rulings, official notifications, or other documents may be transmitted directly to a person resident in the territory of the other Contracting State by registered letter.

Article 13. Where an Agency of one Contracting State is required to make payments to an Agency of the other Contracting State, such payments shall be made in the currency of the other Contracting State.

Article 14. The withholding of cash benefits in accordance with article 18 of the Agreement shall be governed by the laws of the Contracting State whose agency is to withhold the cash benefits.

Article 15. The use of information furnished under the Agreement by one Contracting State to another with regard to an individual shall be governed by the respective national statutes for the protection of privacy and confidentiality of personal data.

Article 16. 1. (a) Pursuant to the provisions of article 2, paragraph 51a, subparagraphs 2 and 3, of the German Wage-Earners' Pension Insurance (Reform) Act (ArVNG) and of article 2, paragraph 49a, subparagraphs 2 and 3, of the German Salaried Employees' Pension Insurance (Reform) Act (AnVNG), all of which entered into force on October 19, 1972, persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive voluntary contributions to the German pension insurance system for the period from January 1, 1956, through December 31, 1973. Such persons shall be deemed to be eligible for voluntary insurance under the German pension insurance system as if they were German nationals.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of article 18 of this Administrative Agreement. Such an application shall be filed with the German Competent Agency to which the person's last contribution was paid or, if the

last contribution was paid to the Miners' Pension Insurance system, with the liaison agency of the Salaried Employees' Pension Insurance system.

(c) The contributions shall be paid directly to the Agency specified in paragraph (b) with which the application was filed.

(d) The contributions may be accepted by the Agency concerned in installments over a period of up to three years. Such contributions may be made only up to the German contribution assessment ceiling for monthly earnings of the year 1973. The calculation of the German benefit computation base applicable to the insured persons shall be based on the figures for 1973.

(e) Events relevant to eligibility for a benefit under German laws which arise in the period between October 18, 1972, and the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(f) The application of the provisions of this section shall in all other respects be subject to the German transitional laws which entered into force on October 19, 1972.

2. (a) Pursuant to the provisions of section 10 and section 10a of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG), persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive contributions to the German pension insurance system.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of article 18 of this Administrative Agreement.

(c) In applying the provisions specified in paragraph (a) of this section, periods of coverage under United States laws shall be taken into account to the same extent as periods of coverage under German laws for the required period of coverage of 60 calendar months.

(d) Events relevant to eligibility for a benefit under German laws which arise before the end of the first twelve months after the date specified in the first sentence of article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(e) If a person specified in paragraph (a) of this section has died before the date specified in the first sentence of article 18 of this Administrative Agreement, section 10 subsection 3 and section 10a subsection 3 of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG) shall apply accordingly.

(f) Paragraph (d) of section (1) of this Article shall also apply to this section.

Article 17. This Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Administrative Agreement.

Article 18. This Administrative Agreement shall enter into force on the date on which both Governments will have informed each other that the steps necessary under their national statutes to enable the Administrative Agreement to take effect have been taken. It shall be effective from the date of entry into force of the Agreement.

DONE at Washington on June 21, 1978, in duplicate in the English and German languages, both texts being equally authentic.

For the Government
of the United States of America:

[Signed — Signé]¹

For the Government
of the Federal Republic of Germany:

[Signed — Signé]²

¹ Signed by Joseph A. Califano, Jr. — Signé par Joseph A. Califano.

² Signed by B. von Staden — Signé par B. von Staden.