

No. 21058

**FINLAND
and
FEDERAL REPUBLIC OF GERMANY**

**Convention on unemployment benefits (with final protocol).
Signed at Helsinki on 23 April 1979**

Authentic texts: Finnish and German.

Registered by Finland on 17 May 1982.

**FINLANDE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Convention relative aux allocations chômage (avec protocole
final). Signée à Helsinki le 23 avril 1979**

Textes authentiques : finnois et allemand.

Enregistrée par la Finlande le 17 mai 1982.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF FINLAND AND
THE FEDERAL REPUBLIC OF GERMANY ON UNEMPLOY-
MENT BENEFITS

The Republic of Finland and the Federal Republic of Germany,

Desiring to regulate their relations in the field of social security in case of unemployment, have agreed as follows:

SECTION I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purposes of this Convention:

(1) 1. "Legislation" means the laws, ordinances, regulations and other law-making instruments in general relating to the branches of social security specified in article 2, paragraph 1;

2. "Competent public authority" means:

—In relation to the Federal Republic of Germany, the Federal Minister of Labour and Social Affairs;

—In relation to the Republic of Finland; as regards unemployment insurance, the Ministry of Social Affairs and Health; as regards unemployment assistance, the Ministry of Labour;

3. "Insurance authority" means:

—In relation to the Federal Republic of Germany, the Federal Labour Institute;

—In relation to the Republic of Finland; as regards unemployment insurance, the Ministry of Social Affairs and Health and the recognized unemployment funds; as regards unemployment assistance, the Ministry of Labour and the provincial labour offices;

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

5. "Qualifying period" means the minimum period of employment and of membership in an unemployment fund which is required in order to establish an entitlement to benefits under the applicable legislation;

6. "Unemployment benefit" means the unemployment insurance benefit payable to unemployed persons under the legislation of the Contracting State in which the benefit is claimed;

7. "Unemployment insurance" means:

—In relation to the Federal Republic of Germany, the unemployment benefit not based on contributions (*Arbeitslosenhilfe*);

—In relation to the Republic of Finland, the unemployment benefit payable exclusively out of national budget funds (*työttömyyskorvaus*).

¹ Came into force on 1 October 1981, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Bonn on 20 August 1981, in accordance with article 28.

(2) As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the relevant laws of that State.

Article 2. MATERIAL SCOPE

(1) Except as otherwise provided in this Convention, it shall apply:

- 1. To the legislation of the Federal Republic of Germany concerning unemployment insurance and unemployment assistance;
- 2. To the legislation of the Republic of Finland concerning unemployment insurance and unemployment assistance.

(2) As regards the application of this Convention, legislation which arises in the case of a Contracting State out of other international treaties or out of supranational law, or which serves for their implementation, shall not apply.

Article 3. PERSONAL SCOPE; EQUAL TREATMENT

(1) This Convention shall apply to nationals of the Contracting States.

(2) Except as otherwise provided in article 24, persons to whom this Convention applies shall be accorded equal treatment in respect of their rights and obligations under the legislation of the Contracting States referred to in article 2, paragraph 1.

Article 4. DETERMINATION OF THE APPLICABLE LEGISLATION

(1) Except as otherwise provided in paragraph 2, insurability and the obligation to contribute shall be determined by the legislation of the Contracting State in which the employed person is employed, even if the employer is in the other Contracting State.

(2) Where, in accordance with articles 6, 7, 9 and 10 of the Convention on social security between the Federal Republic of Germany and the Republic of Finland,¹ the legislation applied for the purpose of determining compulsory insurability is not the legislation in force at the place of employment but the legislation of the other Contracting State, the legislation of that Contracting State shall also apply with respect to the material scope of the present Convention.

Article 5. EFFECT OF RECEIPT OF INCOME OR EXERCISE OF EMPLOYMENT ON THE OBLIGATION TO CONTRIBUTE AND ON BENEFITS IN THE OTHER CONTRACTING STATE

Where, in accordance with the legislation of one of the Contracting States, the receipt of a social security benefit or other income or the exercise of an employment has legal effects on the obligation to contribute or insurability or on a benefit under this Convention, the receipt of similar benefits or similar income from the other Contracting State or the exercise of a similar employment in the other Contracting State shall have the same effect.

¹ See p. 195 of this volume.

SECTION II. ENTITLEMENT TO BENEFITS

I. GENERAL PROVISION

Article 6

Except as otherwise provided in this section, for the purposes of entitlement to benefits and of procedure, the legislation of the Contracting State in which the benefit is claimed shall apply.

2. UNEMPLOYMENT INSURANCE

Article 7. AGGREGATION OF PERIODS COMPLETED IN THE CONTRACTING STATES

(1) For the purpose of determining entitlement to benefits:

- (a) Periods of employment during which the unemployed person was subject to the legislation of the Republic of Finland and was a member of a Finnish unemployment fund shall be treated in the Federal Republic of Germany as if they were periods of employment in the Federal Republic of Germany entailing an obligation to contribute;
- (b) Periods of employment entailing an obligation to contribute to the Federal Labour Institute shall be treated in the Republic of Finland as if they were periods during which the unemployed person was a member of a Finnish unemployment fund and was employed in the Republic of Finland. In addition, any period of residence in the Federal Republic of Germany shall be assimilated to a period of membership in so far as the unemployed person would have been eligible for membership if he had been resident in the Republic of Finland. Travel or removal time, up to a maximum of eight weeks, shall likewise be assimilated.

(2) Where the unemployed person claims benefits in the Federal Republic of Germany, paragraph 1 shall apply only if the unemployed person:

- (a) Has, after taking up residence in the Federal Republic of Germany, exercised for not less than four weeks an employment entailing an obligation to contribute under the legislation of the Federal Republic of Germany, or
- (b) Possesses the nationality of that Contracting State.

(3) Where the unemployed person claims benefits in the Republic of Finland, paragraph 1 shall apply only if the unemployed person:

- (a) Has, after taking up residence in the Republic of Finland, been a member of a Finnish unemployment fund and been employed in the Republic of Finland for not less than four weeks, or
- (b) Possesses the nationality of that Contracting State.

(4) Periods which, in accordance with the legislation of one of the Contracting States, are assimilated to periods of membership or employment or to periods of employment entailing an obligation to contribute shall also be taken into account in the other State.

Article 8. REDUCTION OF THE PERIOD OF ENTITLEMENT

(1) The period of entitlement shall be reduced by any periods for which an insurance authority of the other Contracting State has paid an unemployment

benefit to the unemployed person within the last 12 months before the date of the claim, unless the unemployed person has completed a further qualifying period after receipt of that benefit.

(2) Where a claim to benefits has been temporarily or permanently denied, such action shall affect in the same way and for the same length of time any claim by the unemployed person against the insurance authority in the other Contracting State.

Article 9. TRANSFER OF RESIDENCE WHILE IN RECEIPT OF BENEFITS

(1) Where a national of either Contracting State who is receiving unemployment benefits under the legislation of a Contracting State transfers his residence to the other Contracting State while in receipt of the benefits, the insurance authority of the last-mentioned State shall pay the benefits in accordance with the legislation applicable to that insurance authority without investigating whether the qualifying period would also have been completed under that legislation, provided that the unemployed person fulfills the condition laid down in article 7, paragraph 2(b) or paragraph 3(b). Article 8 shall apply.

(2) Benefits shall be payable as from the date on which the unemployed person ceases to receive benefits under the legislation of the first-mentioned Contracting State, provided that he reports to the employment agency of the other Contracting State within seven days after that date.

(3) Paragraph 1 shall not apply if more than eight weeks elapse between the last day of receipt of benefits in one of the Contracting States and the submission of the claim in the other Contracting State.

Article 10. ASSESSMENT OF THE BENEFIT

Where, in accordance with the legislation of a Contracting State, the amount of the benefit depends on the amount of the wage previously earned, the assessment of the benefit for the period during which the employed person was not subject to the legislation of that Contracting State shall be based on the average standard wage or, if there is no standard wage scale, on the prevailing local wage for a corresponding employment at the place of residence.

Article 11. REIMBURSEMENT OF CONTRIBUTIONS AND BENEFITS

Contributions and benefits shall not be reimbursed either by the Contracting States or by the insurance authorities.

3. UNEMPLOYMENT ASSISTANCE

Article 12. (1) Where, in accordance with the legislation of a Contracting State, entitlement to unemployment assistance depends on the completion of a period of employment in that State, a period of employment completed in the other Contracting State shall be treated as if it were a period of employment completed in the first-mentioned State. Article 7, paragraphs 2 and 3, and articles 8 to 11 shall apply *mutatis mutandis*.

(2) Where, in accordance with the legislation of a Contracting State, entitlement to unemployment assistance depends on the fact that an entitlement to unemployment benefits previously existed and has been exhausted, an entitlement to unemployment benefits which existed under the legislation of the other Contracting State and has been exhausted shall be treated as if it were an entitle-

ment which existed in the first-mentioned Contracting State and has been exhausted. Article 7, paragraphs 2 and 3, and articles 8, 10 and 11 shall apply *mutatis mutandis*.

SECTION III. MISCELLANEOUS PROVISIONS

OFFICIAL AND LEGAL ASSISTANCE

Article 13. GENERAL OFFICIAL ASSISTANCE; PROTECTION OF INFORMATION

(1) The insurance authorities, associations of insurance authorities, public authorities and courts of the Contracting States shall assist one another in the implementation of the legislation specified in article 2, paragraph 1, and of this Convention as if they were applying the legislation to which they themselves are subject. Such assistance shall be free of charge.

(2) Where, pursuant to the Convention, personal information or industrial or business secrets are transmitted by a Contracting State to the other Contracting State, the relevant national legislation concerning the protection of personal information and industrial and business secrets shall apply both to their transmittal and to their use.

Article 14. RECIPROCAL RECOGNITION AND ENFORCEMENT OF COURT ORDERS AND DOCUMENTS

(1) Enforceable court orders and enforceable documents issued by the insurance authorities or public authorities of a Contracting State in matters concerning contributions and other debt-claims within the purview of this Convention shall be recognized in the other Contracting State.

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

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

(4) Debt-claims of insurance authorities in a Contracting State relating to arrears in contributions shall, in the event of forced execution or of bankruptcy or composition proceedings in the other Contracting State, have the same priority as corresponding debt-claims in that Contracting State.

(5) For the purposes of paragraph 1, the term "other debt-claims" includes the claims for damages specified in article 20.

Article 15. EXEMPTION FROM LEGAL DUES OR CHARGES AND FROM LEGALIZATION

(1) Any exemption from or reduction in legal dues or charges, including consular and administrative fees, provided for under the legislation of a Contracting State in the case of documents or papers which are required to be submitted pursuant to that legislation shall also extend to the corresponding documents and papers required to be submitted pursuant to this Convention or to the legislation of the other Contracting State specified in article 2, paragraph 1.

(2) Documents required to be submitted pursuant to this Convention or to the legislation of a Contracting State specified in article 2, paragraph 1, shall not require legalization or any other similar formality for use in dealing with agencies of the other Contracting State.

Article 16. PROCEDURE FOR COMMUNICATION BETWEEN PUBLIC AUTHORITIES, COURTS AND INSURANCE AUTHORITIES

In implementing the legislation specified in article 2, paragraph 1, and this Convention, the agencies referred to in article 13 may communicate in their own languages directly with one another and with the persons concerned and their representatives. Legislation concerning the use of interpreters shall not be affected. Judgements, decisions or other documents may be served directly on a person resident in the other Contracting State by registered letter with return receipt.

Article 17. PROMPTITUDE

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

(2) Claims, notices and appeals shall be transmitted without delay by the agency of one of the Contracting States to which they have been submitted to the competent agency of the other Contracting State.

Article 18. POWERS OF REPRESENTATION OF CAREER CONSULAR MISSIONS

Career consular missions of one of the Contracting States shall be entitled in the other Contracting State, at the request of the interested parties, to perform such acts as may be necessary to protect and uphold the rights of nationals of the first-mentioned State without producing a power of attorney, provided that personal performance by the unemployed person is not prescribed. In particular, they may lodge claims, notices and appeals with the agencies referred to in article 13, in the interests of such nationals.

IMPLEMENTATION AND INTERPRETATION OF THE CONVENTION

Article 19. RECIPROCAL INFORMATION; LIAISON OFFICES

(1) The competent public authorities shall inform one another of any changes in, and additions to, the legislation in force for them specified in article 2, paragraph 1.

(2) The Convention shall be implemented by liaison offices. The liaison offices shall be as follows:

—In the Federal Republic of Germany, the head office of the Federal Labour Institute, Nürnberg;

—In the Republic of Finland, for unemployment insurance, the Ministry of Social Affairs and Health; for unemployment assistance, the Ministry of Labour.

Article 20. CLAIMS FOR DAMAGES AGAINST THIRD PARTIES

Where a person who may claim unemployment benefits under the legislation of a Contracting State referred to in article 2, paragraph 1, is entitled, in accordance with the legislation of the other Contracting State, to claim damages from a third party for the injury resulting from unemployment, the insurance authority may, as a condition for the payment of benefits, require the person concerned to transfer to it the claim for damages, in so far as it incurs expenses through the payment of benefits, including benefits already provided.

Article 21. PAYMENT TRANSACTION; CURRENCY CONVERSION

Liability for cash benefits may be discharged by an insurance authority of a Contracting State in favour of a person resident in the other Contracting State by payment in the currency of the last-mentioned State. In transactions between the insurance authority and the beneficiary, conversion shall be effected at the rate of exchange prevailing on the date of remittance of the cash benefit. Payments to be made by an insurance authority to an insurance authority of the other Contracting State shall be effected in the currency of the last-mentioned Contracting State. Payments to be made by an insurance authority to an insurance authority of the other Contracting State in cases covered by article 14 shall be effected in the currency of the first-mentioned Contracting State.

Article 22. RECOVERY OF BENEFITS PAID IN ERROR

(1) Where the insurance authority of a Contracting State has paid cash benefits in error, the amount paid in error may be deducted, for account of the insurance authority, from the payment of arrears or of a current benefit under the legislation of the other Contracting State.

(2) Where a person is entitled under the legislation of a Contracting State to a cash benefit for a period for which benefits have been provided to him or his dependants by a public assistance authority of the other Contracting State, such cash benefit shall, at the request and for account of the public assistance authority which is entitled to compensation, be withheld as if that authority were a public assistance authority having its seat in the first-mentioned Contracting State.

(3) A deduction in accordance with paragraph 1 shall be permissible only where the funds cannot be recovered in some other manner.

Article 23. ARBITRATION CLAUSE

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

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

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

(4) If the time-limits referred to in paragraph 3 are not adhered to, either Contracting State may, in the absence of some other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of a Contracting State or is unable to act for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of a Contracting State or is also unable to act, the next most senior member of the Court who is not a national of a Contracting State shall make the appointments.

(5) The arbitral tribunal shall take its decisions by majority vote, on the basis of the treaties existing between the Parties and of general international law. Its decisions shall be binding. Each Contracting State shall bear the expenses of its member and the costs of its representation before the arbitral tribunal. The expenses of the Chairman and other costs shall be borne equally by the Contracting States. The arbitral tribunal may make some other ruling concerning costs. In all other respects, the arbitral tribunal shall establish its own rules of procedure.

*Article 24. PARTICIPATION IN THE ORGANS OF INSURANCE AUTHORITIES
AND IN ESTABLISHING THE "USUS FORI"*

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

SECTION IV. TRANSITIONAL AND FINAL PROVISIONS

Article 25. TRANSITIONAL PROVISIONS

(1) This Convention shall not confer any right to the payment of benefits for the period prior to its entry into force.

(2) For the purpose of the application of this Convention, material events which occurred under the legislation of the Contracting States even before its entry into force shall be taken into account.

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

Article 26. FINAL PROTOCOL

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

Article 27. BERLIN CLAUSE

In conformity with the Quadripartite Agreement of 3 September 1971,¹ this Convention shall be extended to Berlin (West) in accordance with established procedures, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Finland within three months from the date of entry into force of this Convention.

Article 28. ENTRY INTO FORCE

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

¹ United Nations, *Treaty Series*, vol. 880, p. 115.

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

Article 29. PERIOD OF VALIDITY

(1) The Convention is concluded for an indefinite period. Either Contracting State may denounce it, upon three months' notice, with effect from the end of any calendar year.

(2) If, as a result of denunciation, the Convention ceases to have effect, its provisions shall continue to apply to entitlements to benefits acquired up to that time.

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

DONE at Helsinki on 23 April 1979, in two original copies, each in the Finnish and German languages, both texts being equally authentic.

For the Republic of Finland:

MATTI TUOVINEN

For the Federal Republic of Germany:

SIMON

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF FINLAND AND THE FEDERAL REPUBLIC OF GERMANY ON UNEMPLOYMENT BENEFITS

At the time of signing the Convention on unemployment benefits concluded this day between the Republic of Finland and the Federal Republic of Germany, the plenipotentiaries of the two Contracting States declare that agreement has been reached on the following:

1. *Ad article 3:*

For the purpose of the application of the Convention in the Federal Republic of Germany, the following persons shall be assimilated to nationals of that State:

- (a) Refugees within the meaning of article 1 of the Convention relating to the Status of Refugees of 28 July 1951¹ and of the Protocol to that Convention of 31 January 1967;²
- (b) Stateless persons within the meaning of article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954,³

provided that they are normally resident in a Contracting State.

2. *Ad article 7, paragraph 2 (b):*

Where benefits are claimed in the Federal Republic of Germany, the spouse of a national of that Contracting State who is resident in that State shall be assimilated to such a national if the spouse is also resident in that State.

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

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