

No. 22395

**SWITZERLAND
and
FEDERAL REPUBLIC OF GERMANY**

**Convention on social security (with final protocol).
Signed at Freiburg im Breisgau, Federal Republic of
Germany, on 25 February 1964**

**Supplementary Convention to the above-mentioned Con-
vention. Signed at Berne on 9 September 1975**

Authentic texts: German.

Registered by Switzerland on 18 October 1983.

**SUISSE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Convention sur la sécurité sociale (avec protocole final).
Signée à Fribourg-en-Brisgau (République fédérale
d'Allemagne) le 25 février 1964**

**Convention complémentaire à la Convention susmention-
née. Signée à Berne le 9 septembre 1975**

Textes authentiques : allemand.

Enregistrées par la Suisse le 18 octobre 1983.

[TRANSLATION — TRADUCTION]

CONVENTION¹ ON SOCIAL SECURITY BETWEEN THE SWISS CONFEDERATION AND THE FEDERAL REPUBLIC OF GERMANY

The Swiss Federal Council and the President of the Federal Republic of Germany, Desiring to foster relations between the two States in the matter of social security and to bring them into line with current legislation, have decided to conclude a convention to replace that of 24 October 1950² and to that end have appointed as their plenipotentiaries:

The Swiss Federal Council:

Dr Arnold Saxer, Director responsible for international conventions on social insurance;

The President of the Federal Republic of Germany:

Mr. Gerrit von Haefsten, Director in the Ministry of Foreign Affairs.

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

PART I. GENERAL PROVISIONS

Article 1. For the purposes of this Convention:

1. The term “national” means, in the case of Switzerland, a Swiss national; in the case of the Federal Republic of Germany, a German within the meaning of the Basic Law for the Federal Republic of Germany;

2. The term “competent authority” means, in the case of Switzerland: the Federal Office of Social Insurance (Bundesamt für Sozialversicherung); in the case of the Federal Republic of Germany: the Federal Minister of Labour and Social Affairs (Bundesminister für Arbeit und Sozialordnung);

3. The term “to reside” means to be ordinarily resident;

4. The term “frontier commuters” means nationals of one of the Contracting Parties who reside in the territory of one of the Contracting Parties and are in regular gainful employment in the territory of the other Contracting Party;

5. The term “family allowances” means, in the case of Switzerland, the children’s allowance under Swiss Federal legislation; in the case of the Federal Republic of Germany: the children’s allowance under German legislation.

Article 2. This Convention shall apply:

1. In the Federal Republic of Germany to the legislation concerning:

- (a) Pensions insurance for manual workers, pensions insurance for salaried workers, pensions insurance for miners and the Saar, pensions insurance scheme for iron and steel workers;
- (b) Old-age benefits for farmers;

¹ Came into force on 1 May 1966, i.e., the first day of the second month following the month in which the instruments of ratification were exchanged at Berne on 30 March 1966, in accordance with article 48.

² See p. 100 of this volume.

- (c) Statutory accident insurance;
- (d) Children's allowance.

2. In Switzerland, to the federal legislation concerning:

- (a) Old-age and survivors' insurance;
- (b) Invalidity insurance;
- (c) Compulsory State accident insurance;
- (d) Family allowances,

to the extent that such legislation does not derive from the provisions of international treaties or supranational law, or serve to implement such provisions.

Article 3. This Convention shall apply, except as it provides otherwise, to nationals of the two Contracting Parties and their family members and survivors, in so far as the latter derive their rights from such nationals.

Article 4. The persons referred to in article 3 shall, except as otherwise provided in this Convention, have equal rights and obligations under the legislation of the Contracting Parties.

Article 5. 1. Where a person is employed or carries out an activity in the territory of one of the Contracting Parties, the legislation of that Party shall apply in respect of compulsory insurance, unless otherwise provided in articles 6 to 9. The compulsory insurance of persons who are not employed or engaged in an activity shall be regulated by the legislation of the Contracting Party in whose territory they reside.

2. With regard to compulsory insurance and the calculation of contributions of persons to whom the legislation of the two Contracting Parties is applicable under the first paragraph, each Contracting Party shall take into account only income earned in its own territory.

Article 6. 1. A person employed by an enterprise having its principal place of business in the territory of one of the Contracting Parties who is sent to work temporarily in the territory of the other Party shall, from the day of his arrival in the territory of the second Party and for a period of 24 months, remain subject to the legislation of the first Party as if he were employed at the principal place of business of the enterprise. If the period of employment in the territory of the second Party exceeds 24 months, the legislation of the first-mentioned Party shall continue to apply, on condition that a request to that effect has first been made by the employed person with the consent of his employer or by the employer with the consent of the employed person and the competent authority of the Contracting Party whose legislation should apply under article 5, paragraph 1, gives its consent and has secured the agreement of the competent authority of the other Party.

2. A person employed by an enterprise extending from the frontier region of one of the Contracting Parties into the frontier region of the other Party who is employed in the part of the enterprise situated in the latter region shall be subject to the legislation of the first Party as if he were employed in the place where the enterprise has its principal place of business.

3. A person employed by a public or private transport enterprise having its principal place of business in the territory of one of the Contracting Parties who is sent to work temporarily in the territory of the other Party or who is permanently employed on the railway lines of the transport enterprise shall be subject to the legislation of the first Party as if he were employed at the place where the enterprise has its principal place of business.

4. A person employed by an airline having its principal place of business in the territory of one of the Contracting Parties who is sent to work either temporarily or for an extended period in the territory of the other Party shall be subject to the legislation of the first Party as if he were employed in the place where the enterprise has its principal place of business.

5. Paragraphs 1 to 4 shall apply irrespective of the nationality of the employed person.

Article 7. 1. The crew of a sea-going vessel flying the flag of one of the Contracting Parties shall be subject to the legislation of that Party.

2. An employed person who is resident in the territory of one of the Contracting Parties and is temporarily employed on board a sea-going vessel flying the flag of the other Party by an employer having his principal place of business in the territory of the first-mentioned Contracting Party who is not the owner of the vessel shall be subject to the legislation of the first-mentioned Contracting Party.

3. A person employed in a port of one of the Contracting Parties for the loading, unloading or repairs of a vessel flying the flag of the other Contracting Party, or employed for the supervision of such work, shall be subject to the legislation of the first-mentioned Contracting Party.

4. Paragraphs 1 to 3 shall apply irrespective of the nationality of the employed person.

Article 8. 1. A national of one of the Contracting Parties who is sent to the territory of the other Party in the service of the first Party or of another public employer of the said Party shall be subject to the legislation of the first-mentioned Party as if he were employed at the place where the employer has his principal place of business.

2. A national of one of the Contracting Parties who is employed only for work in an official administrative department of that Party in the territory of the other Contracting Party shall be subject to the legislation of the latter Party. He may, within a period of three months following either the commencement of his employment or the conversion of temporary employment into permanent employment, elect to be subject to the legislation of the first-mentioned Party. The choice shall be declared to the employer and to the competent body of the first Party. The legislation of that Party shall be applicable from the date of the declaration, as if the person were employed at the place where the employer has his principal place of business.

3. Where a national of one of the Contracting Parties is employed in the personal service of a member of the diplomatic mission or a consular mission of that Party in the territory of the other Party, the provisions of paragraph 2 shall apply, *mutatis mutandis*.

4. Paragraphs 1 to 3 shall not apply to persons in the service of an honorary consul.

Article 9. At the request of the employed person and with the consent of the employer, or at the request of the employer and with the consent of the employed person, the competent authority of the Contracting Party whose legislation should apply under articles 5 to 8 may, with the consent of the competent authority of the other Contracting Party, permit the legislation of that other Party to be applied. If the application of the legislation of the second Contracting Party is permitted, its legislation shall apply when the person concerned is employed in the territory of the first Party as if he were employed in the territory of the second Party.

Article 10. 1. Legislation of one Contracting Party concerning the reduction, suspension, extinction or cessation of a social security benefit when it coincides with

another social security benefit or other forms of income, and that precluding entitlement to a social security benefit as long as the applicant is engaged or is not engaged in a certain activity or is covered by compulsory insurance, shall also be applicable in respect of circumstances of the same kind arising from the application of the legislation of the other Party or in the territory of that Party. Where benefits coincide in respect of which there are provisions for reduction, suspension, extinction or cessation in the legislation of both Parties, such benefits shall be reduced by half the amount by which they should be reduced in application of the legislation on which the entitlement is based.

2. Benefits granted for the same insurance contingency shall not be deemed to be of the same kind within the meaning of paragraph 1 when they are awarded by the same branch of insurance. Public assistance benefits shall not be counted as income within the meaning of paragraph 1.

PART II. PENSIONS INSURANCE

Article 11. 1. Contribution periods completed and counting towards the acquisition of entitlement to benefits under Swiss legislation, and equivalent periods, shall be taken into account in determining the completion of the waiting period under German legislation. This rule shall apply on condition that a contribution period of at least 12 months has been completed, and counts towards the completion of the waiting period, under German legislation, and that periods specified in the first sentence which correspond to completed contribution periods or equivalent periods counting towards the completion of the waiting period under German legislation shall not be taken into account.

2. Where the waiting period under German legislation is completed only if the periods referred to in the first sentence of paragraph 1 are taken into account, family allowances and compensatory amounts for sickness insurance shall be allocated to beneficiaries of annuities only in so far as they bear the same relation to the whole as the contribution periods and equivalent periods which were completed under German legislation bear to the total of all such periods completed under the legislation of the two Parties.

Article 12. 1. For purposes of counting intervals and supplementary periods under German legislation, admission to an insurance scheme and contribution periods under Swiss legislation shall be treated as equivalent to admission to an insurance scheme and contribution periods under German legislation, to the extent that the person concerned was employed during the periods in question.

2. Where a supplementary period under German legislation is counted only if the periods referred to in paragraph 1 are taken into account, only that part of the supplementary period which bears the same relation to the whole as the contribution periods and equivalent periods completed under German legislation bear to the total of all such periods completed under the legislation of both Parties shall be taken into account.

Article 13. For the payment of an early old-age pension, contribution periods completed under Swiss legislation shall be treated as equivalent, to the extent that the person concerned was employed during those periods, to the periods of employment or activity prescribed under German legislation.

Article 14. In respect of the supplementary payments for sickness insurance of annuitants under German legislation, the Swiss sickness insurance scheme shall be treated as equivalent to the German sickness insurance scheme.

Article 15. 1. Contribution periods completed under Swiss legislation shall pursuant to article 11 be taken into account by the German pensions insurance scheme for miners when they have been carried out in an underground mine. Where, under German legislation, it is a condition for entitlement to benefits that the person concerned was employed as a hewer underground or engaged in similar work, contribution periods completed under Swiss legislation shall be taken into account only to the extent that comparable work was carried out during these periods. A mine shall mean enterprises which extract minerals and other similar materials by mining techniques or which extract stones and soil primarily by means of underground activity.

2. Contribution periods completed under Swiss legislation shall be taken into account pursuant to article 12 by the German pensions insurance scheme for miners when the last contribution made before the occurrence of the insurance contingency under German legislation was made to the pensions insurance scheme for miners.

3. Contribution periods completed under Swiss legislation which are not to be taken into account by the German pensions insurance scheme for miners shall be taken into account by the pensions insurance scheme for salaried workers when the person concerned was last employed as a salaried worker during those periods, or otherwise by the pensions insurance scheme for manual workers.

Article 16. 1. Contribution periods completed under Swiss legislation shall be taken into account for purposes of establishing the right to continued insurance under German legislation if, during these periods, an occupation or activity was engaged in which would have involved the obligation to participate in an insurance scheme under German legislation.

2. Where no compulsory insurance period has been completed under German legislation, continued insurance shall, if a corresponding occupation or activity was most recently engaged in during the periods mentioned in the first paragraph, be applied by the pensions insurance scheme for salaried workers, or otherwise by the pensions insurance scheme for manual workers.

3. Continued insurance under German legislation shall not be permissible during contribution periods and equivalent periods completed under Swiss legislation.

Article 17. With regard to the time-limits prescribed under German legislation for the purpose of refunding contributions, admission to an insurance scheme, cessation of the obligation to participate in an insurance scheme and the payment of contributions under German legislation shall be treated as equivalent to comparable determining factors under Swiss legislation.

Article 18. 1. Nationals of one of the Contracting Parties shall benefit from rehabilitation measures under the legislation of the other Party if they reside in its territory and have paid contributions in accordance with its legislation for at least one full year immediately before the said measures come to be considered.

2. Married women and widows of German nationality who are not gainfully employed and minors of the same nationality shall benefit from rehabilitation measures under the Swiss invalidity insurance scheme if they are resident in Switzerland and have resided there continuously for at least one year immediately before the said measures to be considered. Children shall also benefit from rehabilitation measures if they are resident in Switzerland and were either born there handicapped or have resided there continuously since their birth.

3. Frontier commuters shall benefit, in accordance with the legislation of the Contracting Party in whose territory they have been or continue to be employed, from whatever measures may be necessary to integrate them into the economic life of the

territory of that Contracting Party, if they have paid contributions in accordance with the legislation of that Party for at least five full years, including at least six months during the two years immediately before the said provisions come to be considered.

4. More favourable provisions of either Contracting Party shall not be affected.

Article 19. 1. In respect of entitlement to ordinary annuities under the Swiss invalidity insurance scheme, the following shall also be deemed to be insured persons under Swiss legislation:

- (a) German nationals who were entitled to an ordinary annuity under the Swiss invalidity insurance scheme before their departure from Switzerland;
- (b) German nationals who are insured under the German pensions insurance scheme;
- (c) Frontier commuters employed in Switzerland who have paid contributions under Swiss legislation for at least five full years, including at least six months during the two years immediately before the onset of invalidity.

2. Ordinary annuities for insured persons who are less than 50 per cent handicapped and allowances for the disabled under the Swiss invalidity insurance scheme shall be granted to German nationals only if they are resident in Switzerland.

Article 20. German nationals shall be entitled to special annuities under Swiss legislation if they are resident in Switzerland and if immediately before the month from which the annuity is claimed, they have lived there continuously for 10 years in the case of an old-age annuity and for five years in the case of an invalidity annuity, a survivors' annuity or an old-age annuity replacing either of the two last-mentioned.

PART III. ACCIDENT INSURANCE

Article 21. 1. A person who is entitled to benefits in kind as a result of an industrial accident (occupational disease) under the legislation of either Contracting Party shall also receive those benefits, subject to article 25, paragraph 1(b), when, with the prior authorization of the competent authority, he transfers his residence, during medical treatment, to the territory of the other Contracting Party. Authorization to transfer residence must be granted if there is no objection on medical grounds and if the person goes to his family. When these conditions are met, authorization may be given to a transfer *a posteriori* if for reasons beyond his control the person concerned has not requested prior authorization.

2. Where a person is entitled to benefits in kind under the legislation of either Contracting Party as a result of an industrial accident (occupational disease) sustained in the territory of the other Party or sustained at an earlier date, he shall receive those benefits in kind, to the extent that he needs them, in the territory of the other Contracting Party as well.

3. The benefits in kind which a person is to receive in accordance with paragraphs 1 and 2 shall be provided:

— In the Federal Republic of Germany:

By the General Local Sickness Fund (Allgemeine Ortskrankenkasse) competent for the place of residence of the person concerned or, where it does not exist, the *Land* Sickness Fund (Landkrankenkasse) competent for the territory;

— In Switzerland:

By the Swiss Accident Insurance Institute (Schweizerischen Unfallversicherungsanstalt); in accordance with the legislation applicable to the insurance authority of the place of residence, as if the person were insured with that authority.

4. Prosthesis and other major benefits in kind shall, except in urgent cases, be provided only with the prior authorization of the competent authority.

Article 22. With the exception of annuities, grants for funeral expenses and necessary allowances, the cash benefits to which a person is entitled in accordance with the legislation of either Contracting Party shall be provided, in the cases envisaged in article 21, paragraph 1 or 2, at the request of the competent institution and under the modalities of the legislation applicable to it:

— In the Federal Republic of Germany:

By the General Local Sickness Fund (Allgemeine Ortskrankenkasse) competent for the place of residence of the person concerned or, where it does not exist, the *Land* Sickness Fund (Landkrankenkasse) competent for the territory;

— In Switzerland:

By the Swiss Accident Insurance Institute (Schweizerischen Unfallversicherungsanstalt).

The competent authority shall, in its request, specify the amount and duration of the said cash benefits.

Article 23. 1. The competent insurance authority shall refund the amounts disbursed in accordance with articles 21 and 22, less administrative costs, to the insurance authority of the place of residence.

2. The competent authorities may agree, at the request of the competent insurance authorities, that the amounts disbursed shall in all cases or in particular categories of cases be repaid in lump sums or that their repayment shall be waived.

Article 24. 1. For purposes of determining entitlement to benefits and the extent of loss of earning capacity resulting from an industrial accident (occupational disease) under the legislation of one of the Contracting Parties, accidents (diseases) recognized as industrial accidents (occupational diseases) under the legislation of the other Party shall be taken into account. Wounds within the meaning of legislation on assistance to war victims shall be treated in the same way as the accidents in question.

2. The following provisions shall apply to cash benefits calculated according to the extent to which earning capacity has been impaired:

- (a) In respect of the first industrial accident (occupational disease), cash benefits shall continue to be paid. If the entitlement to benefits is acquired only by virtue of the application of paragraph 1, the insurance authority shall pay cash benefits according to the extent to which earning capacity has been impaired as a result of the industrial accident (occupational disease);
- (b) In respect of a subsequent industrial accident (occupational disease), the competent insurance authority shall pay only the difference between the cash benefits payable on grounds of the loss of earning capacity prior to the subsequent industrial accident (occupational disease) and those payable under the legislation applicable to that authority on grounds of the overall loss of earning capacity determined on the basis of paragraph 1, taking into account the subsequent industrial accident (occupational disease).

Article 25. 1. For purposes of determining entitlement to benefits on grounds of an occupational disease, the occupations in which the person concerned has been employed in the territory of the two Contracting Parties and to which the disease may be attributed shall be taken into account by the insurance authorities of the two Contracting Parties. The following provisions shall apply:

- (a) Each insurance authority shall decide whether the conditions for entitlement to benefits are fulfilled in accordance with the legislation to which it is subject;
- (b) Where an entitlement to benefits exists under the legislation of both Contracting Parties, benefits in kind and cash benefits, with the exception of annuities, shall be granted only in accordance with the legislation of the Party in whose territory the person concerned is resident;
- (c) Where an entitlement to an annuity exists under the legislation of both Contracting Parties, each insurance authority shall grant only the part corresponding to the ratio of the period of employment in the territory of the Party in which it is situated to the total period spent in occupations of the kind which qualify under the first sentence;
- (d) Subparagraph (c) shall also apply when the annuity is revised on the ground of a worsening of the occupational disease.

2. Paragraph 1, subparagraphs (a) and (c), shall also apply to the granting of the survivors' annuity.

3. If the requirements for the granting of the annuity are fulfilled, the insurance authority of the Contracting Party in whose territory the person resides shall make advance payments before the annuity is determined.

Article 26. For the purpose of lump-sum commutation of an annuity, residence in the territory of the other Contracting Party shall not be deemed to be residence abroad.

PART IV. FAMILY ALLOWANCES

Article 27. 1. A person who is gainfully employed in the territory of one Contracting Party shall be entitled to family allowances in respect of children who reside in the territory of the other Contracting Party as if they resided in the territory of the first-mentioned Party.

2. A person who, in the course of one calendar month, is subject to the legislation first of one and then of the other Contracting Party shall be entitled to family allowances for the calendar month in question only under the legislation of the second Contracting Party.

3. If, during the same period, an entitlement to family allowances exists for the same child under the legislation of both Contracting Parties, and if the father is employed exclusively in the territory of one of the Contracting Parties, the legislation of that Party shall apply. In other cases, the legislation of the Party in whose territory the child resides shall apply, and no family allowance shall then be paid under the legislation of the other Party.

PART V. MISCELLANEOUS PROVISIONS

Article 28. In the application of German legislation imposing special conditions on the payment of annuities for industrial accidents (occupational diseases) sustained outside the territory of the Federal Republic of Germany or annuities based on insurance periods completed outside the territory, article 4 shall apply to Swiss nationals as long as they reside in the territory of one of the Contracting Parties.

Article 29. Article 4 shall not apply to the legislation of the Contracting Parties on the admissibility of insured persons and employers to election to membership in the organs of insurance authorities and associations and on the appointment of honorary assessors in social court proceedings.

PART VI. PROVISIONS FOR IMPLEMENTATION

Article 30. For purposes of the application of this Convention, the public authorities, courts and insurance authorities of the Contracting Parties shall assist one another as they would assist national public authorities, courts and social security authorities. Such assistance shall be free of charge, with the exception of medical examinations. The cost of medical examinations and hospitalization for observation, including related and travel costs, shall be reimbursed by the applicant body.

Article 31. 1. Where certificates or other documents required to be submitted to a public authority, court or insurance authority of one of the Contracting Parties are wholly or partly exempt from legal dues or charges, such exemption shall also extend to certificates and other documents required to be submitted to a public authority, court or insurance authority of the other Contracting Party in implementation of this Convention.

2. Certificates which are required to be submitted in implementation of this Convention to a public authority, court or insurance authority of one of the Contracting Parties need not be authenticated for use in dealing with a public authority, court or insurance authority of the other Party when they bear the official stamp or official seal of the body from which they emanate.

Article 32. 1. The public authorities, courts and insurance authorities of the Contracting Parties may, for the purposes of the application of this Convention, communicate directly with one another and with the persons concerned and their representatives in their official languages, subject to article 35, paragraph 2. National legislation concerning the use of interpreters shall be complied with.

2. The public authorities, courts and insurance authorities of one Contracting Party shall not reject claims or other documents on the ground that they are drawn up in an official language of the other Contracting Party.

Article 33. 1. Any claim, notice or appeal which must be submitted to a public authority, court, insurance authority or other body under the legislation of one of the Contracting Parties shall be deemed to have been submitted to the competent body when they have been submitted to a corresponding body of the other Party; the date of receipt of the claim, notice or appeal by that body shall be treated as the date of receipt by the competent body.

2. Claims, notices and appeals shall be transmitted without delay to the competent body of the other Party by the body to which they have been submitted.

Article 34. Decisions of an insurance authority of one of the Contracting Parties may be served on a person resident in the territory of the other Contracting Party direct by means of a registered letter.

Article 35. 1. The competent authorities shall inform each other of measures taken in application of this Convention and of any changes in, and additions to, provisions of their national legislation which affect its application. They may prescribe directly in an agreement the administrative measures necessary for the application of this Convention.

2. In order to facilitate the implementation of this Convention, and more particularly relations between the insurance authorities, the following liaison offices shall be designated:

In the Federal Republic of Germany:

— For manual workers' pensions insurance: the Baden *Land* Insurance Institute (Landesversicherungsanstalt Baden), Karlsruhe;

- For salaried workers' pensions insurance: the Federal Insurance Institute for Salaried Workers (Bundesversicherungsanstalt für Angestellte), Berlin;
 - For miners' pensions insurance: the Ruhr Miners' Insurance Association (Ruhrknappschaft), Bochum;
 - For the Saar pensions insurance scheme for iron and steel workers: the *Land* Insurance Institute for the Saar (Landesversicherungsanstalt für das Saarland), Saarbrücken;
 - For accident insurance: the Federation of Trade Association (Hauptverband der gewerblichen Berufsgenossenschaften e. V.), Bonn;
 - For family allowances: the Federal Employment and Unemployment Insurance Institute (Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung), Nürnberg;
- In Switzerland:
- For old-age and survivors' insurance and invalidity insurance: the Swiss Compensation Fund (Schweizerische Ausgleichskasse), Geneva;
 - For accident insurance: the Swiss Accident Insurance Institute (Schweizerische Unfallversicherungsanstalt), Lucerne;
 - For family allowances: the Federal Office of Social Insurance (Bundesamt für Sozialversicherung), Berne.

3. The German liaison offices for manual workers' and salaried workers' pensions insurance and miners' salaried pensions insurance shall also be responsible for awarding benefits where entitlement is acquired under Part II, unless the German Federal Railway Insurance Institute (Bundesbahn-Versicherungsanstalt) or the Seamen's Fund (Seekasse) is liable.

Article 36. Liability for cash benefits may be discharged by an insurance authority of one of the Contracting Parties in favour of a person residing in the territory of the other Party by payment in the currency of the latter Party. 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 benefits.

Article 37. Cash benefits payable to a person under the legislation of one of the Contracting Parties shall also be paid to assistance agencies of the other Contracting Party, in accordance with the modalities of application in force at the head office of the insurance authority.

Article 38. Where an insurance authority of one of the Contracting Parties has made an advance payment, the competent insurance authority of the other Contracting Party may, at the request of the insurance authority of the first Party, offset that advance, to the extent permissible under the legislation applicable to it, against a corresponding payment of arrears or a current payment.

Article 39. 1. Where a person who is entitled to receive benefits under the legislation of one of the Contracting Parties in respect of an injury sustained in the territory of the other Contracting Party is entitled, in accordance with the regulations of that Party, to claim damages for such injury from a third party, the claim for damages shall be transferred to the insurance authority of the first-mentioned Contracting Party by which the benefits are payable, in accordance with the legislation applicable to it. The second Contracting Party shall recognize the transfer, on condition that the provisions of its national legislation applicable to the same branch of insurance also provide for the transfer of the claim for damages.

2. Where in application of the previous paragraph the insurance authorities of both Contracting Parties are entitled to claim damages in respect of benefits allocated for the same contingency, they shall be joint creditors and shall make the necessary internal arrangements to divide the payment between them in proportion to the benefits payable by each of them.

Article 40. 1. Disputes concerning the interpretation or application of this Convention shall be settled, as far as possible, by the competent authorities of the Contracting Parties.

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

3. The arbitral tribunal shall be constituted *ad hoc*; each Contracting Party 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 Parties. The members shall be appointed within two months and the Chairman within three months after one of the Contracting Parties has informed the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the time-limits mentioned in paragraph 3 above are not adhered to, either of the Contracting Parties may request the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of a Contracting Party or if he is unable to act, the Vice-President shall make the appointments. If the Vice-President is also a national of a Contracting Party or also unable to act, the next most senior member of the Court who is not a national of a Contracting Party shall make the appointments.

5. The decisions of the arbitral tribunal shall be by majority vote. Its decisions shall be binding. Each Contracting Party shall defray the expenses of its members and the costs of its representation in the arbitral proceedings; the expenses of the Chairman and other expenses shall be shared equally by the Contracting Parties. The arbitral tribunal may make some other ruling concerning costs. In all other respects the arbitral tribunal shall establish its own rules of procedure.

PART VII. TRANSITIONAL AND FINAL PROVISIONS

Article 41. 1. This Convention shall also apply to insurance contingencies which occurred before its entry into force and to contribution periods, equivalent periods and periods of residence completed before its entry into force.

2. Periods for which contributions were paid in accordance with article 6, paragraph 5, of the Convention of 24 October 1950 referred to in article 49 shall count as contribution periods completed in respect of an occupation for which insurance is compulsory under German legislation.

3. Paragraph 1 shall not confer any right to benefits for periods prior to the entry into force of this Convention. It shall not apply to benefits involving a single payment or to claims which have been settled by a lump-sum payment or the refund of contributions.

Article 42. 1. Annuities under the Swiss invalidity insurance scheme and annuities under the Swiss old-age and survivors' insurance scheme which replace them shall also be paid in respect of periods prior to the entry into force of this Convention, but not earlier than 1 January 1960.

2. Swiss ordinary old-age and survivors' insurance annuities shall not be paid under the present Convention unless the insurance contingency occurred after 31 Decem-

ber 1959 and provided that the contributions were not transferred or refunded under article 6, paragraph 5, of the Convention of 24 October 1950 referred to in article 49. Rights which German nationals may claim in respect of insurance contingencies which occurred on an earlier date shall continue to be governed by article 6 of the above-mentioned Convention.

3. German pensions insurance annuities awarded in application of article 28 shall also be paid in respect of periods prior to the entry into force of this Convention, but not earlier than 1 January 1959.

4. Cash benefits under the German pensions insurance scheme shall not be paid to Swiss nationals under the provisions of this Convention unless the insurance contingency occurred after 31 December 1959 and provided that contributions were not transferred in application of article 7, paragraph 5, of the Convention of 24 October 1950 referred to in article 49. The rights of such persons shall continue to be regulated by article 7 of that Convention.

Article 43. This Convention shall not preclude the continuation of participation commenced prior to its entry into force in continued insurance under the German pensions insurance scheme. However, contributions which have been or are paid to the continued insurance scheme provided for under the German pensions insurance scheme for periods overlapping periods of membership of the Swiss old-age, survivors' and invalidity insurance schemes shall be treated as contributions to supplementary insurance.

Article 44. 1. Where the insurance contingency occurred before the date of entry into force of this Convention, annuities shall on application be awarded or revised with effect from that date and, in the cases envisaged in article 42, paragraphs 1 and 3, from the date referred to in those provisions. An application shall not be necessary when the annuities have to be determined *ex officio* under the provisions of national legislation.

2. An annuity shall be maintained at the amount fixed before the entry into force of this Convention if revision according to the first paragraph leads to the elimination or reduction of the amount of payments previously made.

3. The periods of admissibility of applications for cash benefits and the limitation periods in respect of such benefits, provided for under the legislation of the Contracting Parties, shall commence no earlier than the date of entry into force of this Convention.

Article 45. The Final Protocol annexed to this Convention shall form an integral part thereof.

Article 46. This Convention shall also apply to *Land Berlin*, unless the Government of the Federal Republic of Germany notifies the Swiss Federal Council to the contrary within three months after the entry into force of the Convention.

Article 47. 1. This Convention is concluded for a period of one year from the date of its entry into force; it shall remain in force for further one-year periods, unless it is denounced by one Party at least three months before the expiry of the current such period.

2. If, as the result of denunciation, the Convention is terminated, its provisions shall continue to apply to entitlements to benefits acquired up to that time; restrictive legislation relating to the preclusion of an entitlement or the suspension or withdrawal of benefits owing to residence abroad shall not be taken into account in respect of such entitlements.

Article 48. 1. This Convention shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Berne.

2. The 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 49. 1. The Convention between the Swiss Confederation and the Federal Republic of Germany of 24 October 1950 shall cease to apply upon the entry into force of this Convention, without prejudice to article 42.

2. The Supplementary Convention of 24 December 1962¹ to the Convention between the Swiss Confederation and the Federal Republic of Germany on social insurance, of 24 October 1950, shall form an integral part of this Convention.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting Parties have signed this Convention and have thereto affixed their seals.

DONE at Freiburg im Breisgau, on 25 February 1964, in two original copies.

For the Swiss Confederation:
SAXER

For the Federal Republic of Germany:
G. VON HAEFTEN

FINAL PROTOCOL RELATING TO THE CONVENTION ON SOCIAL SECURITY BETWEEN THE SWISS CONFEDERATION AND THE FEDERAL REPUBLIC OF GERMANY

At the time of signing the Convention on social security concluded this day between the Swiss Confederation and the Federal Republic of Germany, hereinafter referred to as "the Convention", the undersigned plenipotentiaries declare that agreement has been reached on the following:

1. The pensions insurance scheme for craftsmen shall be included in the pensions insurance scheme for manual workers within the meaning of article 2, paragraph 1 (a) of the Convention.

2. The Convention shall not apply to Swiss legislation concerning optional insurance for Swiss nationals residing abroad.

3. With the exception of article 10, the Convention shall also apply to Swiss legislation concerning non-industrial accident insurance.

Where a beneficiary can claim benefits in kind from the Swiss accident insurance fund and the German statutory sickness fund or the German accident insurance agency in respect of a non-industrial accident, the costs of the benefits in kind shall be apportioned between the insurance authorities in proportion to the benefits they are obliged to pay under their national legislation. If the accident occurred while the insured person was travelling to or from work and if a German statutory sickness fund must also pay benefits, only the Swiss accident insurance fund shall have responsibility for such costs.

¹ See p. 100 of this volume.

4. The Convention shall not affect the Convention on the social security of Rhine boatmen as in force at present or hereafter.

5. The Convention shall also apply to refugees within the meaning of the International Convention relating to the status of refugees of 28 July 1951¹ where they reside in the territory of one of the Contracting Parties. 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. More favourable provisions of national legislation shall not be affected.

6. Article 4 of the Convention shall not apply to annuities payable by the German insurance authorities at their discretion.

7. Article 4 of the Convention shall not apply to the Swiss legislation concerning old-age, survivors' and invalidity insurance for Swiss nationals who work outside the territory of the Contracting Parties for an employer in Switzerland and are remunerated by that employer, or to Swiss legislation on benefits paid to disabled Swiss nationals resident abroad.

8. Articles 6, 7 and 9 shall apply, *mutatis mutandis*, to persons who, under German legislation, are regarded as salaried workers in respect of insurance requirements.

9. The period laid down in article 8, paragraphs 2 and 3, of the Convention shall begin on the date of entry into force of the Convention when the person is already employed or has been formally appointed on that date.

10. Articles 12 and 13 of the Convention shall apply, *mutatis mutandis*, to periods completed under Swiss legislation during which an independent activity was carried out, to the extent that that activity, if it had been regulated by German legislation, would have been subject to insurance requirements.

11. The period of residence referred to in article 20 of the Convention shall be deemed to be continuous if absence from Swiss territory has not exceeded three months in one calendar year. Periods of exemption from insurance under the Swiss old-age, survivors' and invalidity insurance schemes shall not form part of the required period of residence.

12. Where the children of a person who is gainfully employed in the territory of the Federal Republic of Germany reside in a Swiss canton whose legislation does not provide for the payment of family allowances for the children of German nationals who reside in the Federal Republic of Germany, no family allowance shall be paid under German legislation for the children of that person. However, this provision shall not apply to the children of a person employed in an economic sector in respect of which, in the place of residence of the children, provisions exist whereby family allowances are also paid for children residing in the Federal Republic of Germany.

13. In cases where the reciprocity envisaged in article 39, paragraph 1, second sentence, of the Convention does not exist, questions relating to the transfer and recognition of the right to reparation and to relations between interested creditors may be settled without reference to the solution envisaged in that provision.

14. Transfers from the sickness insurance scheme of one Contracting Party to the sickness insurance scheme of the other Party shall be facilitated as follows:

(a) Where a national of one of the Contracting Parties who either resides in Switzerland or transfers his residence there from the Federal Republic of Germany withdraws from the German statutory sickness insurance scheme, he shall, irrespective of his age and state of health, be admitted to membership in one of the

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

recognized sickness funds designated by the competent Swiss authority and shall be insured for sickness benefits and medical care, provided that:

- He satisfies the other statutory requirements for admission;
- He was insured with an insurance authority belonging to the German statutory sickness insurance scheme immediately before he changed his residence;
- He applies for admission within three months following his withdrawal from that insurance scheme; and
- He is not changing his residence solely in order to seek therapeutic or medical treatment.

The right to join a recognized sickness fund shall also extend, in respect of medical insurance, to the wife and the children under 20 years of a national of one of the Contracting Parties who satisfies the above-mentioned requirements.

For the acquisition of entitlement to benefits with the exception of maternity benefits, under the regulations of the sickness fund, insurance periods completed in the German statutory sickness insurance scheme shall also be taken into account. Illnesses contracted before joining the scheme may not be excluded from insurance, unless they are war disabilities.

- (b) Where a national of one of the Contracting Parties discontinues his insurance with a recognized Swiss sickness fund, insurance periods completed in the Swiss medical insurance scheme shall be taken into account, both in respect of his right to continued optional insurance and in respect of the insurance of holders of annuities under the German statutory sickness insurance scheme, as if he had been obliged to participate in the German statutory sickness insurance scheme during those periods. This provision shall not apply to the acquisition of entitlement to maternity benefits.

The insurance shall be arranged by the statutory sickness fund which is competent for the place of residence or, in the absence of residence in the territory of the Federal Republic of Germany, by the statutory sickness fund competent for the place of work.

DONE at Freiburg im Breisgau, on 25 February 1964, in two original copies.

For the Swiss Confederation:
SAXER

For the Federal Republic of Germany:
G. VON HAEFTEN

[TRANSLATION — TRADUCTION]

SUPPLEMENTARY CONVENTION¹ TO THE CONVENTION ON SOCIAL SECURITY OF 25 FEBRUARY 1964 BETWEEN THE SWISS CONFEDERATION AND THE FEDERAL REPUBLIC OF GERMANY²

The Swiss Federal Council and the President of the Federal Republic of Germany Have agreed to modify and supplement the Convention on social security concluded by the two States on 25 February 1964²—hereinafter referred to as the Convention—and for that purpose have appointed as their plenipotentiaries:

The Swiss Federal Council:

Dr. Cristoforo Motta, Minister Plenipotentiary, Delegate of the Federal Council for international social security conventions,

The President of the Federal Republic of Germany:

Dr. Jürgen Diesel, Ambassador Extraordinary and Plenipotentiary, who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Article 1. 1. Article 1, paragraph 4 of the Convention is amended to read as follows:

“4. The term “frontier commuters” shall mean nationals who reside in the territory of one of the Contracting Parties or of a third State and are in regular gainful employment in the territory of the other Contracting Party”.

2. Article 10 of the Convention is deleted.

3. Article 11 of the Convention is amended to read as follows:

“1. Where the insurance periods counting towards the acquisition of entitlement to benefits under German legislation amount to at least 12 months, the insurance periods to be counted under Swiss legislation shall also be taken into account for the acquisition of entitlement under German legislation, provided that they do not overlap.

2. Where the waiting period envisaged under German legislation is completed only with the inclusion of the periods referred to in the first paragraph, allowances for dependent children shall be allocated only at the rate of 50 per cent.”

4. Article 12 of the Convention is amended to read as follows:

“1. For purposes of accounting intervals in respect of which no lump-sum payment is made and supplementary periods under German legislation, admission to an insurance scheme and contribution periods under Swiss legislation shall be treated as equivalent to admission to an insurance scheme and contribution periods under German legislation, to the extent that the person concerned was employed during those periods. For periods of training, and of school, vocational

¹ Came into force on 1 November 1976, i.e., the first day of the second month following the month in which the instruments of ratification were exchanged at Bonn on 30 September 1976, in accordance with articles 3 (1) and 5 (1).

² See p. 196 of this volume.

or university study to be countable, a compulsory contribution under German legislation must also be countable.

2. Where the conditions governing entitlement to benefits are fulfilled only if article 11, paragraph 1, is taken into account, only 50 per cent of the portion of the benefit attributable to the supplementary period shall be payable.”

5. Article 15, paragraph 1, of the Convention is amended to read as follows:

“1. Contribution periods completed under Swiss legislation shall be taken into account by the German pensions insurance scheme for miners, in implementation of article 11, when they have been carried out in an underground mine. Where, under German legislation, it is a condition for entitlement to benefits that the person concerned was employed in permanent underground work or similar work, contribution periods completed under Swiss legislation shall also be taken into account to the extent that such work was carried out during these periods. This rule shall not apply to the granting of supplementary benefits.”

6. Article 16 of the Convention is amended to read as follows:

“1. Swiss nationals normally resident outside the territory of the Federal Republic of Germany shall be entitled to acquire voluntary insurance under the German pensions insurance scheme on condition that they have validly paid at least one contribution to it.

2. Where, under German legislation, the payment of contributions to the German pensions insurance scheme is a prior condition for entitlement to voluntary insurance, contributions paid under Swiss legislation shall be taken into account, on condition that at least one contribution has been validly paid to the German pensions insurance scheme.”

7. Article 17 of the Convention is deleted.

8. Article 18 of the Convention is amended to read as follows:

“1. Nationals of one of the Contracting Parties who are gainfully employed shall benefit from rehabilitation measures under the legislation of the other Party if they reside in its territory and paid contributions in accordance with its legislation immediately before the said provisions came to be considered.

2. Persons of German nationality not gainfully employed and minors of the same nationality shall benefit from rehabilitation measures under the Swiss invalidity insurance scheme if they reside in Switzerland and have lived there continuously for at least one year immediately before the said provisions came to be considered. Children shall also be given rehabilitation benefits if they are resident in Switzerland and were either born there handicapped or have lived there continuously since their birth.

3. Paragraph 1 shall apply, *mutatis mutandis*, to frontier commuters on condition that, before the rehabilitation measures came to be considered, they were in permanent full-time employment.

4. More favourable provisions of either Contracting Party shall not be affected.”

9. Article 19 of the Convention is amended to read as follows:

“1. Where, under the Swiss legislation on old-age, survivors’ or invalidity insurance, entitlement to ordinary annuities is dependent on the existence of an insurance relationship, the following shall also be deemed to be insured persons under Swiss legislation:

- (a) German nationals who, on the date of the occurrence of the insurance contingency under Swiss legislation, are insured under the German pensions insurance scheme;
- (b) Persons who have been gainfully employed in Switzerland as frontier commuters and who, in the three years immediately before the occurrence of the insurance contingency under Swiss legislation, paid contributions under that legislation for at least 12 months.

2. Ordinary annuities for insured persons who are less than 50 per cent handicapped shall be granted to German nationals only if they have their domicile in Switzerland."

10. Article 21, paragraph 3, of the Convention is amended to read as follows:

"3. The cash benefits which a person is to receive in accordance with paragraphs 1 and 2 shall be provided:

— In the Federal Republic of Germany:

By the general local sickness fund (Allgemeine Ortskrankenkasse) competent for the place of residence of the person concerned;

— In Switzerland:

By the Swiss Accident Insurance Institute (Schweizerischen Unfallversicherungsanstalt),

in accordance with the legislation applicable to the insurance authority of the place of residence, as if the person were insured with that authority. The German accident insurance authority which would be competent if the ruling on entitlement to benefits were to be made under German legislation may provide benefits in place of the German authority referred to in the first sentence."

11. Article 22 of the Convention is amended to read as follows:

"With the exception of annuities, grants for funeral expenses and nursing allowances, the cash benefits to which a person is entitled in accordance with the legislation of either Contracting Party shall be provided, in the cases envisaged in article 21, paragraph 1 or 2, at the request of the competent institution and under the modalities of the legislation applicable to it:

— In the Federal Republic of Germany:

By the general local sickness fund (Allgemeine Ortskrankenkasse) competent for the place of residence of the person concerned;

— In Switzerland:

By the Swiss Accident Insurance Institute (Schweizerischen Unfallversicherungsanstalt).

The competent authority shall, in its request, specify the amount and duration of the said cash benefits."

12. Article 24 of the Convention is amended as follows:

(a) In the first paragraph, the words "and the extent to which earning capacity has been impaired" are deleted.

(b) Paragraph 2 (b) is amended to read as follows:

"(b) In respect of a subsequent industrial accident (occupational disease), the competent insurance authority shall allocate cash benefits on the basis of the loss of earning capacity resulting from the industrial accident (occupational disease) which it must take into account under the legislation applicable to it."

13. In article 27 of the Convention, paragraphs 2 and 3 are deleted.

14. The first sentence of article 30 of the Convention is amended to read as follows:

"For purposes of the application of the legislation referred to in article 2 and of this Convention, the public authorities, courts and insurance authorities of the Contracting Parties shall assist one another as they would assist national public authorities, courts and social security authorities."

15. An article 32 (*a*) reading as follows is inserted after article 32 of the Convention:

"A claim to an annuity under the legislation of one of the Contracting Parties which is lodged with a competent agency of that Contracting Party shall also be deemed to be a claim to any corresponding benefit covered by this Convention under the legislation of the other Contracting Party; this provision shall not apply when the applicant declares that the determination of an old-age benefit covered under the legislation of one of the Contracting Parties is to be deferred."

16. Paragraphs 2 and 3 of article 35 of the Convention are amended to read as follows:

"2. In order to facilitate the implementation of this Convention, and more particularly relations between the insurance authorities, the following liaison offices shall be designated:

In the Federal Republic of Germany:

- For manual workers' pensions insurance: the Baden *Land* Insurance Institute (Landsversicherungsanstalt Baden), Karlsruhe;
- For salaried workers' pensions insurance: The Federal Insurance Institute for Salaried Workers (Bundesversicherungsanstalt für Angestellte), Berlin;
- For miners' pensions insurance: the Federal Miners' Insurance Association (Bundesknappschaft), Bochum;
- For the Saar pensions insurance scheme for iron and steel workers: the *Land* Insurance Institute for the Saar (Landesversicherungsanstalt für das Saarland), Saarbrücken;
- For accident insurance: the Federation of Trade Associations (Hauptverband der gewerblichen Berufsgenossenschaften e. V.), Bonn;
- For family allowances: the Federal Labour Institute (Bundesanstalt für Arbeit), Nürnberg;

In Switzerland:

- For old-age and survivors' insurance and invalidity insurance: the Swiss Compensation Fund (Schweizerische Ausgleichskasse), Geneva;
- For accident insurance: the Swiss Accident Insurance Institute (Schweizerische Unfallversicherungsanstalt), Lucerne;
- For family allowances: the Federal Office of Social Insurance (Bundesamt für Sozialversicherung), Berne.

3. The German liaison offices for manual workers' and salaried workers' pensions insurance and miners' pensions insurance shall also be responsible, except in respect of measures to maintain, improve and restore working capacity, for awarding benefits where

- (a) Benefits under part II are in question, or
- (b) The beneficiary resides in Switzerland, unless the German Federal Railway Insurance Institute (Bundesbahnversicherungsanstalt) or the Seamen's Fund (Seekasse) is liable."

17. Article 42, paragraph 4, second sentence, of the Convention is amended to read as follows:

"The rights which Swiss nationals may claim by virtue of insurance contingencies which occurred previously shall continue to be regulated by article 7 of that Convention."

18. Article 43 of the Convention is deleted.

19. Article 44 of the Convention is amended as follows:

(a) Paragraph 3 is amended to read as follows:

"3. Earlier decisions shall not preclude revision."

(b) The existing paragraph 3 becomes paragraph 4.

20. Paragraph 2 of the Final Protocol annexed to the Convention is amended to read as follows:

"2. Where, in addition to the conditions to which the application of the Convention is subject, the conditions for the application of another Convention or of supranational regulations are also met, the German agency shall, in applying the Convention, not take the other Convention or the supranational regulations into account, insofar as they do not provide otherwise."

21. Paragraph 3, first sentence, of the Final Protocol annexed to the Convention is amended to read as follows:

"The Convention shall also apply to Swiss legislation concerning non-industrial accident insurance."

22. The following sentence is added to paragraph 4 of the Final Protocol annexed to the Convention:

"German nationals who are employed on vessels on the Rhine as Rhine boatmen within the meaning of the international Agreement on the social security of Rhine boatmen, as in force at present or hereafter, by enterprises having their principal place of business in Switzerland shall be deemed, in so far as they do not have their domicile in Switzerland, in respect of Swiss old-age, survivors' and invalidity insurance, to be employed in Switzerland; they shall be treated as frontier commuters in respect of entitlement to Swiss invalidity insurance benefits."

23. Paragraph 5 of the Final Protocol annexed to the Convention is amended to read as follows:

"5. The Convention shall also apply to refugees within the meaning of the Convention of 28 July 1951¹ and of the Protocol of 31 January 1967 relating to the status of refugees,² and to stateless persons within the meaning of the Convention of 28 September 1954 relating to the status of stateless persons,³ where they reside in the territory of one of the Contracting Parties. 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. For purposes of the application of this Convention, the above-mentioned persons shall be treated equally, in respect of the legislation of each Contracting Party, with nationals of the Contracting Party in whose territory they reside. More favourable provisions of national legislation shall not be affected."

24. Paragraph 7 of the Final Protocol annexed to the Convention is amended to read as follows:

"7. Article 4 of the Convention shall not apply to Swiss legislation concerning membership of the optional insurance scheme for Swiss nationals residing

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

abroad, or to Swiss legislation on benefits paid to disabled Swiss nationals resident abroad.”

25. A paragraph 8 (a) worded as follows is inserted after paragraph 8 of the Final Protocol of the Convention:

“8 (a). Where German legislation is applicable under articles 6 to 8 or—in the cases defined by these articles—on the basis of an agreement under article 9 of the Convention, the provisions on the obligation to contribute and compulsory withholdings under the Employment Promotion Act (*Arbeitsförderungsgesetz*) shall also be applicable. Similarly, where Swiss legislation is applicable, the provisions concerning ability to contract insurance and the obligation of insurance in Swiss unemployment insurance shall also be applicable. However, when other rules result from the Convention of 4 February 1928 between the German Reich and the Swiss Confederation on the unemployment insurance of frontier commuters,¹ that Convention shall prevail.”

26. Paragraph 10 of the Final Protocol to the Convention is amended to read as follows:

“10. Articles 12 and 13 of the Convention, and also paragraph 10 (b) above, shall apply, *mutatis mutandis*, to periods completed under Swiss legislation during which an independent activity was carried out, to the extent that that activity, if it had been regulated by German legislation, would have been subject to insurance requirements. The same shall apply, in respect of article 12 of the Convention, to independent activities carried out after 18 October 1972 which would, on application, be subject to insurance requirements.”

27. Paragraphs 10 (a) to 10 (g), worded as follows, shall be inserted after paragraph 10 of the Final Protocol to the Convention:

“10 (a). A mine, within the meaning of article 15, paragraph 1, of the Convention, shall mean a company which extracts minerals and other similar substances by mining techniques or which extracts stones and soil primarily by means of underground activity.

“10 (b). For purposes of the application of article 18, paragraph 1, of the Convention, article 11, paragraph 1, thereof shall also, where an insurance period of at least one month countable under German legislation has been completed, apply in respect of rehabilitation benefits to which there is entitlement or which are granted at the discretion of the German pensions insurance agency, to the extent that contribution periods completed under Swiss legislation are taken into account—in so far as an activity was carried out during those periods—in order to determine whether, on the date of submission of the application, contributions have been paid in respect of an occupation or activity subject to insurance for at least six months over the past 24 months.

“10 (c). (1) Further to article 18, paragraph 2, second sentence, of the Convention, children who are born handicapped in the Federal Republic of Germany and whose mothers were resident in German territory for a total of not more than two months prior to the birth shall be treated in the same way as children born handicapped in Switzerland. The Swiss invalidity insurance scheme shall also bear, in cases of congenital diseases of children, costs arising in the Federal Republic of Germany during the first three months after birth, up to the amount that would have been payable by it in respect of such benefits in Switzerland.

¹ League of Nations, *Treaty Series*, vol. LXXIX, p. 241.

(2) A period of not more than three months spent by a child in the Federal Republic of Germany shall not constitute an interruption of the period of residence provided for under article 18, paragraph 2, second sentence, of the Convention.

“10 (d). Employment which is of unlimited duration, or is based on a contract of at least one year, and which affords a livelihood, shall be deemed to be permanent full-time employment within the meaning of article 18, paragraph 3.

“10 (e). German nationals who have to abandon their occupation or activity in Switzerland as a result of an accident or a disease shall, for as long as they benefit from rehabilitation measures under the Swiss invalidity insurance scheme or remain in Switzerland, be deemed to be insured under the old-age, survivors’ and invalidity insurance scheme in respect of entitlement to an ordinary annuity and shall be subject to the obligation to contribute as persons without gainful employment.

“10 (f). German nationals shall be deemed to be members of the German pensions insurance scheme within the meaning of article 19, paragraph 1 (a), of the Convention:

- (a) Where the insurance contingency under Swiss legislation occurs in the course of a month in respect of which a valid contribution was paid to the German pensions insurance scheme, or
- (b) Where the insurance contingency under Swiss legislation occurs during a period classed as a period of interruption under German legislation, or
- (c) Where they receive or are entitled to an old-age or invalidity annuity under the German pensions insurance scheme, or
- (d) Where rehabilitation measures are granted.

“10 (g). Women of German nationality who are resident in the Federal Republic of Germany and, under Swiss legislation, fulfil the other conditions giving rise to entitlement to the ordinary annuities payable to motherless children shall be deemed to be insured for purposes of that entitlement.”

28. Paragraph 12 (a), worded as follows, is inserted after paragraph 12 of the Final Protocol to the Convention:

“12 (a). Upon request, the Swiss liaison office for family allowances shall also provide administrative assistance to German labour offices in respect of family allowances which are not awarded under Swiss federal legislation.”

29. Paragraph 14 of the Final Protocol to the Convention is amended to read as follows:

“14. Transfers from the sickness insurance scheme of one Contracting Party to the sickness insurance scheme of the other Party shall be facilitated as follows:

“(a) Where a person who either resides in Switzerland or transfers his residence there from the Federal Republic of Germany withdraws from the German statutory sickness insurance scheme he shall, irrespective of his age, be admitted to membership in one of the recognized sickness funds designated by the competent Swiss authority and shall be insured for sickness benefits and medical care provided that:

- He satisfies the other statutory requirements for admission;
- He applies for admission within three months following his withdrawal from that insurance scheme; and
- He is not changing his residence solely in order to seek therapeutic or medical treatment.

The right to join a recognized sickness fund shall also extend, in respect of medical insurance, to the wife and the children under 20 years of the above-mentioned person, provided that they satisfy the above-mentioned requirements; the co-insurance shall be incorporated in personal insurance.

For the acquisition of entitlement to benefits under the regulations of the sickness fund, insurance periods completed in the German statutory sickness insurance scheme shall also be taken into account; in respect of maternity benefits, however, the above shall apply only when the insured person has been a member of a Swiss sickness fund for three months.

- (b) Where a person withdraws from a recognized Swiss insurance fund, insurance periods completed in the Swiss sickness insurance scheme in respect of insurance for medical care and pharmaceutical services shall be taken into account in respect of his right to continued optional insurance in the German statutory sickness insurance scheme as if he had been obliged to participate in the German statutory sickness insurance scheme during those periods. This provision, however, shall apply to maternity cases only when the insured person has been a participant in a German statutory sickness fund for three months. Insurance shall be provided by the statutory sickness fund competent for the place of residence or, in the absence of residence in the territory of the Federal Republic of Germany, by the statutory sickness fund competent for the place of work.”

Article 2. 1. Contributions paid to continued insurance under the German pensions insurance scheme and attributed to supplementary insurance under article 43 of the Convention, which is abrogated by the present Supplementary Convention, shall be treated as contributions to optional insurance under the German pensions insurance scheme.

2. Voluntary contributions to the German pensions insurance scheme may be paid *a posteriori*, upon application, for periods extending between 1 January 1956 and the date of the entry into force of this Supplementary Convention provided that, during those periods, membership of the Swiss old-age and survivors' insurance scheme existed and, for those periods, no contributions had already been made to the German pensions insurance scheme. The fact that the old-age insurance contingency occurs less than a year after the entry into force of this Supplementary Convention shall not preclude *a posteriori* payment. An application for *a posteriori* payment must be submitted within three years after the entry into force of this Supplementary Convention to the liaison office competent for the branch of the pensions insurance scheme to which the last contribution was made. When the last contribution was made to the pensions insurance scheme for miners, the application must be submitted, depending on the type of occupation last carried out, either to the liaison office competent in respect of manual workers' pensions insurance, or to the liaison office competent in respect of salaried workers' pensions insurance. Contributions can only be paid directly to the liaison offices and pensions insurance agencies referred to in article 35, paragraph 3, of the Convention. For purposes of the application of this paragraph, reference shall also be made to the legislation in force since 19 October 1972 concerning the *a posteriori* payment of voluntary contributions. German legislation whereby annuities are not considered as such within the meaning of the sickness insurance scheme for annuitants shall apply, *mutatis mutandis*, to annuities for the payment of which contributions are taken into account by virtue of this paragraph.

Article 3. 1. This Supplementary Convention shall enter into force, subject to the provisions below, on the first day of the second month following that during which the instruments of ratification are exchanged.

2. Article 1, paragraphs 9, 17, 19, 22 and 27, and article 2, paragraph 1, shall also apply to insurance contingencies which occurred after 30 April 1966. Article 12, first paragraph, second sentence, of the Convention, as worded in article 1, paragraph 4, above, shall also apply to insurance contingencies which occurred after 18 October 1972.

3. This Supplementary Convention shall not confer any right to the payment of benefits for a period prior to its entry into force.

4. Previous decisions shall not preclude the application of this Supplementary Convention.

5. Annuities which were determined before the date of the entry into force of this Supplementary Convention shall, upon application, be revised. They may also be revised *ex officio*. When the amount of the annuity resulting from the revision is lower than that of the annuity previously paid, the latter amount shall continue to be paid.

Article 4. This Supplementary Convention shall also apply to *Land Berlin*, unless the Government of the Federal Republic of Germany notifies the Swiss Federal Council to the contrary within three months after the entry into force of this Supplementary Convention.

Article 5. 1. This Supplementary Convention shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

2. This Supplementary Convention shall apply for the same duration and under the same conditions as the Convention.

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

DONE at Berne, on 9 September 1975, in two original copies.

For the Swiss Confederation:
C. MOTTA

For the Federal Republic of Germany:
J. DIESEL