

No. 23206

**FEDERAL REPUBLIC OF GERMANY
and
SWITZERLAND**

**Agreement concerning unemployment insurance (with final
protocol). Signed at Berne on 20 October 1982**

Authentic text: German.

Registered by the Federal Republic of Germany on 28 December 1984.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
SUISSE**

**Accord d'assurance chômage (avec protocole final). Signé à
Berne le 20 octobre 1982**

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 28 décembre 1984.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE SWISS CONFEDERATION CONCERNING UNEMPLOYMENT INSURANCE

The Federal Republic of Germany and the Swiss Confederation,
Desiring to further their relations in the matter of unemployment insurance and
to bring them into conformity with the law,
Have agreed as follows:

SECTION I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purposes of this Convention:

1. "Territory" means:

- In the case of the Federal Republic of Germany, the area in which the Basic Law for the Federal Republic of Germany is in force;
- In the case of the Swiss Confederation, hereinafter referred to also as Switzerland, the territory thereof;

2. "National" means:

- In the case of the Federal Republic of Germany, a German within the meaning of the Basic Law for the Federal Republic of Germany;
- In the case of Switzerland, a citizen of Switzerland;

3. "Legislation" means:

- In the case of the Federal Republic of Germany, the laws, ordinances and orders from the Federal Labour Office (Bundesanstalt für Arbeit) relating to the areas of law specified in article 2, paragraph (1);
- In the case of Switzerland, the laws and ordinances relating to the areas of law specified in article 2, paragraph (1);

4. "Competent authority" means:

- In the case of the Federal Republic of Germany, the Federal Minister for Labour and Social Affairs (Bundesminister für Arbeit und Sozialordnung);
- In the case of Switzerland, the Federal Bureau for Industry, Commerce and Labour.

5. "To live in" means: to reside normally and legally in;

6. "Frontier worker" means: an employed person to whom, by virtue of his normal and regular occupation in the frontier zone of either Contracting State, the legislation of that State applies, and who lives in the frontier zone of the other Contracting State;

7. "Insurance authority" means:

- In the case of the Federal Republic of Germany, the Federal Institute for Labour;

¹ Came into force on 1 January 1984, 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 25 November 1983, in accordance with article 23 (2).

— In the case of Switzerland, the agencies responsible for implementing the legislation specified in article 2, paragraph (1).

Article 2. SUBJECT-MATTER COVERED

(1) This Agreement shall apply:

1. In the Federal Republic of Germany, to the legislation concerning
 - (a) Unemployment payments,
 - (b) Short-time workers' payment,
 - (c) Bad-weather payments,
 - (d) Bankruptcy layoff payments,
2. In Switzerland, to the federal legislation concerning
 - (a) Unemployment compensation,
 - (b) Short-time workers' compensation,
 - (c) Bad-weather compensation,
 - (d) Insolvency compensation,and to the legislation on contributions.

(2) In the implementation of this Agreement, legislation which arises for a Contracting State out of international treaties with other States or out of supranational law or which serves for the implementation of such a treaty or law shall not be taken into account.

Article 3. PERSONS COVERED

Except as otherwise provided, this Agreement shall apply to:

- (a) Nationals of the two Contracting States;
- (b) Refugees and stateless persons living in the territory of one of the Contracting States.

Article 4. EQUAL TREATMENT

Where entitlement to one of the benefits specified in article 2, paragraph (1), is dependent, under the legislation of the Contracting State in which such benefit is claimed, on the claimant's being a national of that Contracting State, persons to whom this Agreement applies by virtue of article 3 shall be treated as nationals of such Contracting State, except as otherwise provided in this Agreement.

Article 5. LIABILITY TO CONTRIBUTE

(1) A person's liability to contribute shall be governed by the legislation of the Contracting State in whose territory he or she is employed.

(2) Where, however, under the Convention on social security concluded between the Federal Republic of Germany and the Swiss Confederation,¹ the legislation applied is that of the other Contracting State and not that in force in the place of employment, this shall apply, regardless of the employed person's nationality, also to the liability to contribute under the legislation specified in article 2, paragraph (1).

¹ United Nations, *Treaty Series*, vol. 1335 p. 171.

(3) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations¹ and the Vienna Convention on Consular Relations² pertaining to the legislation specified in article 2, paragraph (1).

SECTION II. SPECIAL PROVISIONS, ENTITLEMENT TO BENEFITS

Article 6. GENERAL PRINCIPLE

Claims to the benefits specified in article 2, paragraph (1), and the relevant procedure shall be governed by the legislation of the Contracting State with whose insurance authority the claims are filed, except as otherwise provided in the following provisions.

Article 7. QUALIFYING PERIOD, ENTITLEMENT PERIOD AND CALCULATION OF BENEFITS FOR NATIONALS OF EACH STATE

(1) Periods of contributory non-independent employment which are completed under the legislation of the other Contracting State shall count towards the qualifying period and the entitlement period to the extent that the claimant is a national of the Contracting State in which the claim is filed and lives in its territory. Such periods shall be considered as if they had been completed under the legislation of that Contracting State.

(2) (a) When calculating unemployment payments under German legislation, the basis for periods completed in accordance with paragraph (1) shall be the prevailing rate of remuneration in the unemployed person's place of residence or normal sojourn or, in the absence of a rating system, the customary local remuneration for the occupation in respect of which the unemployed person is being considered in terms of his age and ability, due account being taken of his vocation and training in relation to the situation and trend of the labour market.

(b) When calculating unemployment compensation under Swiss legislation, the remuneration received shall be taken as the basis for periods completed in accordance with paragraph (1).

Article 8. SPECIAL RULES

(1) Frontier workers shall receive unemployment payments (unemployment compensation) under the legislation of the Contracting State in whose territory they live. Periods of contributory non-independent employment completed under the legislation of the other Contracting State shall count towards the qualifying and entitlement periods. The second sentence of article 7, paragraph (1), and paragraph 2 shall apply *mutatis mutandis*.

(2) Notwithstanding paragraph (1), frontier workers shall receive unemployment payments (unemployment compensation) under the legislation of the Contracting State in whose territory they were employed, as if they lived there, so long as they retain their previous residence in the other Contracting State and are not entitled therein to engage in a non-independent gainful occupation. The competent labour office shall be that of their last place of work.

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

(3) Where an employee of a public transport service or of an enterprise operating across the common frontier of the two Contracting States was not, immediately prior to unemployment, according to the provisions of the social security Agreement concluded between the Federal Republic of Germany and the Swiss Confederation pertaining to article 5, paragraph (2), of the present Agreement, subject to the legislation of the Contracting State in which he was employed and lives, he shall receive unemployment payments (unemployment compensation) under the legislation of the other Contracting State, so long as he retains his residence in the first-mentioned Contracting State and is not entitled therein to engage in a non-independent gainful occupation, as if he lived in the territory of the other Contracting State. In the case of the Federal Republic of Germany, the Lörrach labour office, and, in the case of the Swiss Confederation, the Swiss labour office situated closest to the employee's residence, shall be the competent labour office.

(4) Frontier workers shall receive short-time workers' payments (compensation) and bad-weather payments (compensation) under the legislation of the Contracting State in whose territory they are employed, as if they were resident therein. Regardless of their place of residence, they shall receive bankruptcy layoff payments (insolvency compensation) under the legislation of the Contracting State in which their claim for remuneration is filed.

(5) Frontier workers who, immediately before becoming unemployed, were subject to Swiss legislation and who meet the requirements of article 19 of the Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation concerning the incorporation of Büsingen am Hochrhein municipality into the Swiss customs zone, or who have been living in Büsingen for not less than six months with the intention of acquiring permanent residence, shall receive benefits under article 2, paragraph 1, subparagraph 2, of the said legislation, as if they were resident in Switzerland, but shall receive unemployment compensation only to the extent that they are entitled to accept work in Switzerland. Where, in order to receive these benefits, applicants are required to report in person to the labour office of their place of residence and to be certified as out of work, they must fulfil these obligations through the labour office of the canton of Schaffhausen.

Article 9. REDUCTION OF THE ENTITLEMENT PERIOD

The entitlement period shall be reduced by the number of days for which the unemployed person has already received unemployment payments (unemployment compensation) in the other Contracting State within the last 12 months prior to the date of submission of the claim. Days for which the benefits were withheld because of the unemployed person's misconduct shall count as days for which he or she received benefits.

Article 10. ACCOUNT TAKEN OF BENEFITS IN THE OTHER CONTRACTING STATE

Account shall be taken of the social security benefits of the other Contracting State in the same way as comparable social security benefits of the Contracting State in whose territory the claim is filed.

Article 11. REIMBURSEMENT OF CONTRIBUTIONS FOR FRONTIER WORKERS

(1) Part of the aggregate of the contributions of frontier workers under the legislation of the country of employment, as specified in article 2, paragraph (1), shall be reimbursed annually to the agency, indicated in paragraph (4), of this article, of the country of residence in accordance with the following provisions.

(2) (a) The aggregate of frontier workers' contributions shall be calculated on the basis of the annual average number of employed frontier workers and of the annual average contribution per employed person (employer's and employee's contributions or shares).

(b) This aggregate shall be considered as a percentage equivalent to the percentage of all benefits financed from contributions and assessments that is represented by the benefits specified in article 2, paragraph (1).

(c) The amount thus obtained shall be reimbursed in the same percentage as the percentage of all benefits specified in article 2, paragraph (1), that is represented by unemployment payments (unemployment compensation).

(3) The competent authorities shall determine how the annual average number of employed frontier workers is to be established. They may decide on a lump-sum reimbursement.

(4) The competent authorities for the reciprocal reimbursements under paragraph (1) shall be the Federal Institute for Labour and the Federal Bureau for Industry, Commerce and Labour. Once a year they shall transmit to each other the requisite computation documents.

SECTION III. MISCELLANEOUS PROVISIONS

Article 12. ADMINISTRATIVE ASSISTANCE

The public authorities, courts and insurance authorities of the Contracting States shall assist each other in the implementation of the legislation specified in article 2 and of this Agreement as if they were applying the legislation applicable to themselves. Such assistance shall be provided, in particular, in the submission of information, the taking of evidence, the collection of contributions and the handling of counterclaims in respect of benefits, but not in enforcement. It shall be free of charge. Cash expenditures with the exception of mailing charges shall be reimbursed.

Article 13. PROTECTION OF INFORMATION

Where personal data or commercial or business secrets are transmitted by one Contracting State to the other pursuant to this Agreement or to an arrangement for its implementation, the national legislation in force governing the protection of personal data and commercial and business secrets shall apply to both the transmittal and the use thereof.

Article 14. EXEMPTION FROM CHARGES AND LEGALIZATION

(1) Exemptions from or reduction of taxes or charges, including consular and administrative charges, provided for by the legislation of one Contracting State in respect of documents or instruments required to be submitted in implementation of that legislation, shall be extended to the corresponding documents and instruments required to be submitted in implementation of this Agreement or the legislation of the other Contracting State specified in article 2, paragraph (1).

(2) Documents and instruments of all kinds required to be submitted in implementation of this Agreement or the legislation of the other Contracting State specified in article 2, paragraph (1), shall not require legalization.

Article 15. DIRECT COMMUNICATION

(1) The agencies of the two Contracting States, referred to in article 12, shall, in implementation of the legislation specified in article 2, paragraph (1), and of this Agreement, communicate with one another and with the employers and employees and their representatives.

(2) Notifications and other documents may also be submitted directly to a person resident in the territory of the other Contracting State by registered letter together with a return receipt.

Article 16. ADMINISTRATIVE ARRANGEMENTS AND RECIPROCAL NOTIFICATION

(1) The competent authorities of the two Contracting States shall jointly and directly establish in detail the administrative measures required for implementing this Agreement in so far as mutual consent is necessary. They shall inform each other of the action taken for implementing the Agreement and of any changes in, and additions to, the legislation applicable to them which affect its implementation.

(2) Liaison offices shall be established to facilitate implementation of this Agreement. These offices shall be:

- In the Federal Republic of Germany, the Baden-Württemberg *Land* Labour Office (Landesarbeitsamt Baden-Württemberg) in Stuttgart;
- In Switzerland, the Basel-Land Cantonal Labour Office in Pratteln.

Article 17. WITHHOLDING OF BENEFITS PAID ERRONEOUSLY AND OF ADVANCES

(1) Where the insurance authority of one Contracting Party has paid benefits to a person erroneously, the competent insurance authority of the other Contracting State may, upon the request and for the account of the first insurance authority, withhold the amount paid in error from subsequent or current benefit payments to the beneficiary under the domestic legislation applicable to it.

(2) Where a person is entitled under the legislation of one Contracting State to a cash benefit in respect of a period for which he or his dependants have been granted benefits by a public assistance authority of the other Contracting State, the cash benefit shall, upon request by the public assistance authority entitled to compensation, be withheld for its account as if it were a public assistance authority having its seat in the territory of the first-mentioned Contracting State. Where a person is entitled under the legislation of a Contracting State to a cash benefit in respect of a period for which he or his dependants have been granted benefits by another public authority from public funds, this cash benefit shall, without prejudice to any other international arrangements, upon request by the authority entitled to compensation, be withheld for its account.

Article 18. TRANSFER OF CLAIMS FROM THE PLACE OF EMPLOYMENT

Where an unemployed person under the legislation of one Contracting State receives unemployment payments (unemployment compensation) in respect of a period for which he has claims pending against his previous employers arising from employment in the other Contracting State, such claims shall be transferred on the same basis to the insurance authority of the first-mentioned Contracting State as if the claims were against an employer in that Contracting State.

Article 19. SETTLEMENT OF DISPUTES

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

(2) Where a dispute cannot be settled in this manner, the provisions concerning the arbitral tribunal in the Convention on Social Security concluded between the Federal Republic of Germany and the Swiss Confederation shall apply *mutatis mutandis*.

SECTION IV. TRANSITIONAL AND FINAL PROVISIONS

Article 20. TRANSITIONAL PROVISIONS

(1) This Agreement shall not create any entitlement to benefits in respect of periods prior to the date of its entry into force. Periods of employment completed in the other Contracting State prior to its entry into force shall, however, in so far as article 7 or article 8 is applicable, be taken into account as if the Agreement had already been in force.

(2) Decisions taken prior to its entry into force shall not be affected by this Agreement.

Article 21. FINAL PROTOCOL

The annexed final protocol shall be an integral part of this Agreement.

Article 22. APPLICABILITY TO "LAND BERLIN"

This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Swiss Confederation within three months from the date of entry into force of this Agreement.

Article 23. RATIFICATION, ENTRY INTO FORCE

(1) This Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Bonn.

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

Article 24. TERM OF VALIDITY, DENUNCIATION

(1) This Agreement is concluded for an indefinite period. Either Contracting State may denounce it, on three months' notice, at the end of any calendar year.

(2) If, as a result of denunciation, the Agreement ceases to have effect, its provisions shall continue to apply to entitlements to benefits acquired up to that time, but not longer than for one year after it ceases to have effect.

Article 25. EARLIER PROVISIONS NO LONGER IN FORCE

With the entry into force of this Agreement the following shall cease to have effect:

— The Agreement of 4 February 1928 between the German Reich and the Swiss Confederation regarding unemployment insurance of workers in frontier districts;¹

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

- The Arrangement of 27 February 1976 between the Federal Minister for Labour and Social Affairs of the Federal Republic of Germany and the head of the Swiss Department of National Economy concerning partial unemployment (short-time workers') benefits for frontier workers living in the Federal Republic of Germany and working in Switzerland;
- Paragraph 8 (a) of the final protocol (published along with the Convention) to the Convention on social security of 25 February 1964 between the Federal Republic of Germany and the Swiss Confederation, as worded in the Supplementary Convention of 9 September 1975.¹

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Agreement and have thereto affixed their seals.

DONE at Berne on 20 October 1982 in two originals.

For the Federal Republic of Germany:

Dr. HELMUT REDIES

For the Swiss Confederation:

JEAN-PIERRE BONNY

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE SWISS CONFEDERATION CONCERNING UNEMPLOYMENT INSURANCE

On the occasion of the conclusion today of the Agreement between the Federal Republic of Germany and the Swiss Confederation concerning unemployment insurance, the Plenipotentiaries of the two Contracting States hereby declare that they agree as follows:

1. *Ad article 1, paragraph 6*

(a) So long as Switzerland does not apply the chapter on unemployment of the (Agreement concerning the Social Security of Rhine Boatmen)², a person who lives in either Contracting State and is employed on a Rhine vessel by an enterprise which has its headquarters in the other Contracting State shall be deemed to be a frontier worker. In other respects the present Agreement shall not affect the Agreement on the social security of navigators on the Rhine in its current version.

(b) The frontier zones of both Contracting States shall be determined in accordance with article 1 of the Agreement of 21 May 1970 between the Government of the Federal Republic of Germany and the Swiss Confederation concerning the crossing of the frontier by persons in minor frontier traffic.

2. *Ad article 3*

Refugees and stateless persons within the meaning of article 3 shall mean:

- (a) Refugees within the meaning of article 1 of the Convention of 28 July 1951 relating to the Status of Refugees³ and of the Protocol of 31 January 1967⁴ to that Convention;

¹ United Nations, *Treaty Series*, vol. 1335, p. 171.

² *Ibid.*, vol. 717, p. 3, and vol. 1490, No. I-25584.

³ *Ibid.*, vol. 189, p. 137.

⁴ *Ibid.*, vol. 606, p. 267.

(b) Stateless persons within the meaning of article 1 of the Convention of 28 September 1954 relating to the Status of Stateless Persons.¹

3. *Ad article 4*

The limitation in respect of the group of persons entitled to file claims, in article 14, paragraph 3, of the Swiss Unemployment Insurance Act of 25 June 1982, shall not be affected by this Agreement. Resident German nationals shall have the status of Swiss citizens in all other cases.

4. *Ad article 5, paragraph 1*

Without prejudice to their liability to contribute under Swiss legislation, a contribution to the Federal Institute for Labour may also be required from frontier workers living in the Federal Republic of Germany. Switzerland reserves the right to apply a corresponding provision in the case of frontier workers living in its territory. Payment of unemployment benefits (unemployment insurance) under article 8, paragraph 1, may be made conditional on the payment of the additional contribution.

5. *Ad article 7, paragraph 1*

The rights of refugees and stateless persons arising from the provisions referred to in paragraph 2 of this final protocol shall not be affected.

6. *Ad article 7, paragraph 2, subparagraph 1*

The basis for calculating benefits to be granted by the Federal Institute for Labour, as the case may be, shall be the tax bracket that would be applicable to the unemployed person if he were a taxpayer.

7. *Ad article 8, paragraph 1*

The labour administrations of the two Contracting States shall endeavour to provide employment for unemployed frontier workers and shall co-operate closely for this purpose. The competent authorities may also decide on requisite measures in this connection.

8. *Ad article 11, paragraph 2, subparagraph a*

Switzerland shall make these calculations by economic sectors.

9. *Unemployment assistance in the Federal Republic of Germany*

With regard to claims of German nationals for unemployment assistance, a payment of unemployment compensation under Swiss legislation shall be treated as an unemployment payment under the legislation of the Federal Republic of Germany; in other respects article 7 shall apply *mutatis mutandis*.

DONE at Berne, on 20 October 1982, in two originals.

For the Federal Republic of Germany:

DR. HELMUT REDIES

For the Swiss Confederation:

JEAN-PIERRE BONNY

¹ United Nations, *Treaty Series*, vol. 360, p. 117.