

No. 26276

**FEDERAL REPUBLIC OF GERMANY
and
TUNISIA**

Convention on social security (with final protocol and additional protocol). Signed at Tunis on 16 April 1984

Arrangement relating to the implementation of the above-mentioned Convention. Signed at Tunis on 16 April 1984

Authentic texts: German, Arabic and French.

Registered by the Federal Republic of Germany on 8 November 1988.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
TUNISIE**

Convention sur la sécurité sociale (avec protocole final et protocole additionnel). Signée à Tunis le 16 avril 1984

Arrangement relatif aux modalités d'application de la Convention susmentionnée. Signé à Tunis le 16 avril 1984

Textes authentiques : allemand, arabe et français.

Enregistrée par la République fédérale d'Allemagne le 8 novembre 1988.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TUNISIA ON SOCIAL SECURITY

The Federal Republic of Germany and the Republic of Tunisia,
Desiring to regulate their relations in the matter of social security,
Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

1. "Territory" means:
 - In the case of the Federal Republic of Germany, the area governed by the Basic Law of the Federal Republic of Germany;
 - In the case of the Republic of Tunisia, the territory of the Republic of Tunisia.
2. "National" means:
 - In the case of the Federal Republic of Germany, a German within the meaning of the Basic Law of the Federal Republic of Germany;
 - In the case of the Republic of Tunisia, a person of Tunisian nationality within the meaning of the Tunisian Nationality Code.
3. "Legislation" means the laws, regulations, statutory provisions and other legislative acts relating to the branches and schemes of social security listed in article 2, paragraph 1, which are in force on the date of signature of this Convention or enter into force subsequently.
4. "Competent public authority" means:
 - In the case of the Federal Republic of Germany, the Federal Minister for Labour and Social Affairs;
 - In the case of the Republic of Tunisia, the Minister for Social Affairs.
5. "Insurance authority" means the institute or authority responsible for the application of the legislation specified in article 2, paragraph 1.
6. "Competent insurance authority" means the insurance authority which is competent under the applicable legislation.
7. "Employment" means an employment or occupation within the meaning of the applicable legislation.

¹ Came into force on 1 August 1986, i.e., the first day of the second month following the exchange of the instruments of ratification, which took place at Bonn on 26 June 1986, in accordance with article 37 (2).

8. "Contribution period" means a period in respect of which contributions have been paid or are treated as having been paid under the legislation of one of the Contracting States.

9. "Equivalent period" means a period which is recognized as equivalent to a contribution period under the legislation of the Contracting State under whose legislation it was completed or is deemed to have been completed.

10. "Insurance period" means a contribution period or an equivalent period.

11. "Cash benefit" means a pension (annuity) or other cash benefit, including any increase therein and any supplement or additional allowance payable therewith.

12. "Place of residence" means the place of customary residence.

13. "Place of stay" means the place of a temporary stay.

14. "Insurance authority of the place of residence" means, except as otherwise provided in this Convention, the insurance authority authorized to provide the benefits in question at the place of residence of the person concerned, in accordance with the legislation of the Contracting State which that insurance authority applies or, where no such insurance authority exists, the insurance designated by the competent public authority of the Contracting State concerned.

15. "Insurance authority of the place of stay" means, except as otherwise provided in this Convention, the insurance authority authorized to provide the benefits in question at the place of stay of the person concerned, in accordance with the legislation of the Contracting State which that insurance authority applies or, where no such insurance authority exists, the insurance authority designated by the competent public authority of the Contracting State concerned.

Article 2

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

1. The German legislation concerning:

(a) Sickness insurance and protection of working mothers, in so far as it relates to the granting of cash benefits and benefits in kind by the sickness insurance authorities;

(b) Accident insurance;

(c) Disability/old-age insurance and the supplementary insurance scheme for iron and steel workers (*hüttenknappschaftliche Zusatzversicherung*);

(d) Farmers' old-age benefits.

2. The Tunisian legislation concerning:

(a) The organization of social security schemes, with the exception of family allowance schemes, except where such allowances or similar allowances are provided for under German legislation for persons in receipt of annuities or pensions;

(b) Industrial accidents and occupational diseases;

(c) The disability, old-age and survivors' pension scheme;

(d) The social security scheme for agricultural workers and fishermen;

(e) The social welfare scheme for the public sector.

(2) Provisions of other international agreements or of supranational legislation binding on one of the Contracting States, or provisions for the implementation thereof, shall not apply in the implementation of this Agreement.

Article 3

Except as otherwise provided in this Convention, it shall apply to:

- (a) Nationals of either Contracting State;
- (b) Refugees within the meaning of article 1 of the Convention relating to the Status of Refugees of 28 July 1951¹ and the Protocol of 31 January 1967² to that Convention;
- (c) Stateless persons within the meaning of article 1 of the Convention of 28 September 1954 relating to the Status of Stateless Persons;³
- (d) Other persons in respect of rights which they derive from a national of a Contracting State or from a refugee or a stateless person within the meaning of this article.

Article 4

Except as otherwise provided in this Convention, persons specified in article 3 who are resident in the territory of either Contracting State shall be assimilated, in respect of the application of the legislation of a Contracting State, to nationals of the State whose legislation is to be applied.

Article 5

Except as otherwise provided in this Convention, legislation of one Contracting State making residence in the territory of that State a condition for entitlement to benefits, the grant of benefits or the payment of cash benefits shall not apply to persons specified in article 3 who are customarily resident in the territory of the other Contracting State.

Article 6

Except as otherwise provided in articles 7 to 11, the obligation of an employed person to participate in an insurance scheme shall be governed by the legislation of the Contracting State in the territory of which he is employed; this provision shall also apply when the employer is located in the territory of the other Contracting State.

Article 7

Where a person employed in the territory of either of the Contracting States is assigned by his regular employer to perform work on behalf of the said employer in the territory of the other Contracting State, the legislation of the first-mentioned State shall continue to apply with respect to the obligation to participate in an insurance scheme for a period of 12 months counting from the date on which he is assigned, as if he were still employed in the territory of the first-mentioned State; if the period of such employment exceeds 12 months, the legislation of the first-mentioned Contracting State shall continue to apply for an additional period not exceeding

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

12 months, provided that the competent authorities of the two Contracting States have given their approval prior to the expiry of the first 12-month period.

Article 8

(1) In so far as the obligation to participate in an insurance scheme is concerned, the crew of a vessel shall be subject to the legislation of the Contracting State whose flag the vessel is flying.

(2) An employed person resident in the territory of one Contracting State who is temporarily employed on board a vessel flying the flag of the other Contracting State by an employer having his principal place of business in the territory of the first-mentioned State who is not the owner of the vessel shall be subject, with respect to the obligation to participate in an insurance scheme, to the legislation of the first-mentioned State as if he were employed in its territory.

Article 9

The provisions of articles 6 to 8 shall apply *mutatis mutandis* to persons who are not employed persons but to whom the legislation referred to in article 2, paragraph (1), applies.

Article 10

(1) When a national of one of the Contracting States is employed by the said State or by a member of a diplomatic mission or consular post of that State in the territory of the other Contracting State, the legislation of the first-mentioned State shall apply with respect to the obligation to participate in an insurance scheme.

(2) Where an employed person referred to in paragraph (1) above has resided in the country of employment before the start of his employment, he may, within three months from the start of his employment, opt to be subject to the legislation of the country of employment in respect of the obligation to participate in an insurance scheme. Such choice must be notified to the employer. The chosen legislation shall be applicable from the date of notification.

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* to employed persons referred to in paragraph (1) who are in the service of another public employer.

Article 11

(1) At the joint request of the employed person and the employer, or at the request of a person assimilated to an employed person within the meaning of article 9, the competent public authority of the Contracting State whose legislation governing the obligation to participate in an insurance scheme should apply under articles 6 to 10 may, after the competent public authority of the other Contracting State has given an opinion, grant exemption from that legislation if the person in question is subject, in respect of the obligation to participate in an insurance scheme, to the legislation of the other Contracting State; the nature and circumstances of the employment shall be taken into account in the decision to the extent possible. If the employed person is not employed in the territory of the last-mentioned Contracting State, he shall be deemed to be employed at the place where he was last previously employed. If he was not previously employed in the territory of that State, he shall be deemed to be employed at the place where the competent public authority of that State has its seat.

Article 12

(1) Where the legislation of one Contracting State provides that a benefit or entitlement to a benefit does not exist or is to be reduced because it coincides with other benefits or entitlements, such provision shall also apply with respect to a similar situation under the legislation of the other Contracting State. If, as a result of the foregoing, there should be a reduction in both benefits, each benefit shall be reduced by half the amount of the reduction that would be applied under the legislation on which entitlement to the benefit is based.

(2) Paragraph (1) shall not apply in the case of coincident benefits of the same nature in connection with industrial accidents (occupational diseases) or under disability/old-age insurance determined in accordance with part II, chapters 2 and 3.

(3) Where, under the provisions of one Contracting State, entitlement to a benefit does not exist or a benefit is reduced as long as a person is employed or as long as he is covered by compulsory disability/old-age insurance, such provisions shall also apply with respect to a similar situation under the legislation of the other Contracting State or within its territory.

PART II. SPECIAL PROVISIONS

CHAPTER 1. SICKNESS INSURANCE

Article 13

In so far as entitlement or the maintenance or recovery of entitlement to benefits and the duration of the grant benefits are concerned, insurance periods and periods of receipt of benefits completed under the legislation of both Contracting States shall be aggregated, provided that they do not overlap.

Article 14

(1) The provisions of article 5 shall apply to a person:

(a) Who has transferred his place of residence or his stay to the territory of the other Contracting State after the insurance contingency has arisen only if the competent insurance authority has consented to such transfer in advance;

(b) Who was temporarily resident in the territory of the other Contracting State at the time when the insurance contingency arose only if his condition necessitates immediate benefits;

(c) Who was no longer insured at the time when the insurance contingency arose only if the person went to the territory of the other Contracting State for the purpose of engaging in employment offered.

(2) The consent referred to in paragraph (1) (a) above may be granted subsequently if, for reasonable cause, the person concerned failed to obtain it in advance.

(3) Article 5 shall not apply to a person who is eligible for benefits under the legislation of the Contracting State in whose territory he is customarily or temporarily resident.

(4) The provisions of paragraph (1) (a) and (b) and paragraph (2) shall not apply to maternity benefits.

Article 15

(1) Benefits in kind under article 5 shall be provided:

In the Federal Republic of Germany:

- By the General Local Sickness Fund (Allgemeine Ortskrankenkasse) competent for the place of residence or the place of stay.

In the Republic of Tunisia:

- By the National Social Security Fund (Caisse nationale de sécurité sociale — C.N.S.S.), Tunis.

(2) Benefits in kind shall be provided in accordance with the legislation applied by the insurance authority of the place of residence or the place of stay, with the exception of the provisions concerning the duration of benefits, the family members to be considered and relevant legislative provisions governing the procedure for disputes concerning benefits.

(3) Except in dire emergencies, prostheses and other very expensive benefits shall be provided only with the authorization of the competent insurance authority. A dire emergency shall be deemed to exist in cases where provision of the benefits cannot be delayed without seriously endangering the life or health of the person concerned.

(4) Persons and institutions that have concluded agreements with the insurance authorities referred to in paragraph (1) concerning the provision of benefits in kind to persons insured with the said insurance authorities and their family members shall also be required to provide benefits in kind to the persons referred to in article 5, in the same way as if the last-mentioned persons were insured with the insurance authorities referred to in paragraph (1) or were the family members of such insured persons and as if the agreements also applied to the persons referred to in article 5.

(5) The competent insurance authority shall refund the amounts disbursed in accordance with paragraph (1) to the insurance authority of the place of residence or the place of stay.

(6) The competent public authorities may agree, at the suggestion of the insurance authorities concerned, that in the interests of simplifying administrative procedures, the amounts disbursed shall in all cases or in certain categories of cases be repaid in lump sums.

Article 16

(1) Persons who draw, or have applied to draw, pensions under the disability/old-age schemes of the two Contracting States, shall without prejudice to paragraphs (2) and (3), be subject to the legislation concerning the sickness insurance of pensioners of the Contracting State in whose territory they are resident.

(2) Where a pensioner referred to in paragraph (1) transfers his residence to the territory of the other Contracting State, the legislation of the first-mentioned Contracting State concerning the sickness insurance of pensioners shall be applicable until the end of the month following the one in which the transfer of residence took place.

(3) Where an applicant referred to in paragraph (1) transfers his residence from the territory of one Contracting State to the territory of the other, the legisla-

tion of the first-mentioned Contracting State shall apply until the end of the month following the one in which the transfer of residence took place.

(4) Where a person draws a pension under the disability/old-age insurance scheme of a single Contracting State or has applied only for a single pension, the provisions of article 5 shall apply *mutatis mutandis* with respect to the obligation to participate in an insurance scheme under legislation concerning the sickness insurance of pensioners.

CHAPTER 2. INDUSTRIAL ACCIDENT AND OCCUPATIONAL DISEASE INSURANCE

Article 17

(1) If the legislation of one Contracting State provides that, in the assessment of the degree of reduction of earning capacity or the establishment of entitlement to compensation in the case of an industrial accident (occupational disease), within the meaning of that legislation, other industrial accidents (occupational diseases) shall be taken into account, such provision shall also apply to industrial accidents (occupational diseases) covered by the legislation of the other Contracting State as if they had been covered by the legislation of the first-mentioned Contracting State. Casualties which are recognized as accidents or as other occurrences giving entitlement to compensation under the provisions of public law shall be assimilated to the accidents in question.

(2) The competent insurance authority for payment of compensation shall determine its benefit according to the degree of disability resulting from the industrial accident (occupational disease) which it is required to take into account under the legislation which it is applying.

Article 18

(1) As regards entitlement to benefits by reason of an occupational disease, the insurance authority of one Contracting State shall also take into account any employment exercised in the territory of the other Contracting State to which, in view of the nature of that employment, the disease may be attributed. If, as a result, there is an entitlement to benefits under the legislation of both Contracting States, benefits in kind and cash benefits, with the exception of the pension, shall be granted only under the legislation the Contracting State in whose territory the beneficiary is resident. Each insurance authority shall grant that part of the pension which corresponds to the ratio of the duration of the employment exercised in the territory of its own State to the duration of all employment to be taken into account under the first sentence of this paragraph.

(2) The provisions of paragraph (1) shall also apply to the granting of survivors' benefits.

Article 19

(1) The provisions of article 5 shall apply in respect of benefits in kind to persons who have transferred their customary residence or temporary stay to the territory of the other Contracting State during medical treatment only if the competent insurance authority has consented to such transfer in advance.

(2) The consent referred to in paragraph (1) may be granted subsequently if, for reasonable cause, the person concerned failed to obtain it in advance.

Article 20

(1) Benefits in kind to be granted by an insurance authority of one Contracting State to a person in the territory of the other Contracting State shall, without prejudice to paragraph (3), be provided:

In the Federal Republic of Germany:

— By the General Local Sickness Fund (Allgemeine Ortskrankenkasse) competent for the place of residence or the place of stay.

In the Republic of Tunisia:

— By the National Social Security Fund (Caisse nationale de sécurité sociale — C.N.S.S.), at Tunis.

(2) Benefits in kind shall be provided in accordance with the legislation applicable to the insurance authority of the place of residence or the place of stay.

(3) Vocational rehabilitation measures to be provided under paragraph (1) shall be provided by the accident insurance authority in the territory of the State of the place of residence or place of stay in accordance with the legislation applicable to that authority. The competent insurance authority is the accident insurance authority that would be competent if it were necessary to take a decision in respect of entitlement to benefits under the legislation of that Contracting State.

(4) The accident insurance authority referred to in the second sentence of paragraph (3) may provide benefits in lieu of the insurance authority specified in paragraph (1).

(5) Except in dire emergencies, prostheses and other very expensive benefits in kind shall be provided only with the authorization of the competent insurance authority. A dire emergency shall be deemed to exist in cases where provision of the benefits cannot be delayed without seriously endangering the life or health of the person concerned.

(6) The provision of article 15, paragraph (4) shall apply *mutatis mutandis*.

Article 21

(1) The competent insurance authority shall refund the amounts disbursed in accordance with article 20 to the insurance authority of the place of residence or stay.

(2) The competent public authorities may agree, at the suggestion of the insurance authorities concerned, that in the interests of simplifying administrative procedures, the amounts disbursed shall in all cases or in certain categories of cases be repaid in lump sums.

CHAPTER 3. DISABILITY, OLD-AGE AND SURVIVORS' INSURANCE

Article 22

Where there are reckonable insurance periods under the legislation of both Contracting States, insurance periods which are reckonable under the legislation of the other Contracting State shall also be taken into account for the purpose of the

acquisition, maintenance or recovery of entitlement to benefits under the applicable legislation in so far as they do not overlap. The extent to which insurance periods are reckonable shall be determined in accordance with the legislation governing such reckoning.

Article 23

The following provisions shall apply to the German insurance authority:

1. The Tunisian insurance periods which are taken into account under the provisions of article 22 shall come under the branch of the insurance system whose insurance authority is competent in the case of application of German legislation alone for the determination of the benefit. Where, in accordance with the foregoing, the miners' disability/old-age and survivors' insurance scheme is competent, insurance periods which are to be taken into account under Tunisian legislation shall be taken into account in the miners' disability/old-age insurance scheme if they were completed in underground mining enterprises.

2. The insurance periods which are to be taken into account for purposes of calculating pensions under German legislation shall constitute the bases for computation.

3. If the conditions for entitlement to a pension are fulfilled only when the provisions of article 22 are taken into account, only half of that portion of the benefit which pertains to the supplementary period (*Zurechnungszeit*) shall be paid.

4. The dependent children's supplement or the amount by which the orphan's pension is increased shall be paid in accordance with national legislation if, irrespective of the provisions of article 22, there is entitlement to a pension and no dependent children's supplement or orphan's pension is payable under Tunisian legislation; in other cases, the amount of the dependent children's supplement or the amount by which the orphan's pensions is to be increased shall be half the amount payable under national legislation.

5. As regards cessation of the compensation benefit under miners' disability/old-age insurance, Tunisian mining enterprises shall be treated in the same way as German mining enterprises.

Article 24

The following provisions shall apply to the Tunisian insurance authority:

1. In respect of German insurance periods to be taken into account under the provisions of article 22, for the determination of benefits Tunisian legislation alone shall apply. The Tunisian insurance authority shall determine on the basis of the legislation which it applies whether the insured person satisfies the requirements for entitlement to benefits, taking into account, where applicable, the provisions of article 22.

2. If the insured person satisfies the requirements specified in the second sentence of subparagraph 1 above, the said insurance authority shall calculate the theoretical amount of the benefit to which he would be entitled if all the insurance periods completed under the legislation of both Contracting States had been completed exclusively under the legislation which that authority applies. The said insurance authority shall then fix the actual amount of the benefit payable to such person by prorating the theoretical amount referred to in the preceding sentence on the

basis of the ratio of the duration of the insurance periods completed under the legislation which it is applying before the insurance contingency arose to the total duration of the insurance periods completed under the legislation of both Contracting States before the insurance contingency arose.

3. If the insured person satisfies the requirements for entitlement to benefits without the application of the provisions of article 22, the Tunisian insurance authority shall determine the amount of the benefits on the basis of the insurance periods completed under Tunisian legislation alone.

PART III. MISCELLANEOUS PROVISIONS

CHAPTER I. ADMINISTRATIVE ASSISTANCE

Article 25

(1) The insurance authorities, associations of insurance authorities and public authorities of the Contracting States charged with applying the legislation specified in article 2, paragraph (1), and the provisions of this Convention shall lend each other their good offices as if they were applying the legislation applicable to themselves. With the exception of out-of-pocket expenses, such assistance shall be free of charge.

(2) The first sentence of paragraph (1) shall also apply to medical examinations. The costs of such examinations, travel expenses, loss of earnings, the costs of hospitalization for observation and other out-of-pocket expenses, with the exception of postage, shall be refunded by the requesting agency. The costs shall not be refunded if the medical examination has served for the establishment of an applicant's entitlement in respect of the competent insurance authorities of both Contracting States.

Article 26

(1) Exemptions from or reductions of taxes and stamp duties provided for in respect of certificates or other documents required to be submitted to the insurance authorities of a Contracting State referred to in article 25, paragraph (1), shall also apply to certificates and other documents required to be submitted to a corresponding agency of the other Contracting State in implementation of the legislation referred to in article 2, paragraph (1).

(2) Certificates and other documents which are required to be submitted to one of the agencies of a Contracting State mentioned in article 25, paragraph (1), in implementation of the legislation specified in article 2, paragraph (1), shall not require legalization or any other similar formality for use in dealing with agencies of the other Contracting State.

Article 27

The agencies referred to in article 25, paragraph (1) may, in implementation of the legislation specified in article 2, paragraph (1), and of this Convention, communicate directly in their official languages with one another and with the persons concerned and their representatives. Provisions concerning the use of interpreters shall not be affected. Judgements, decisions or other papers may be served on a person resident in the territory of the other Contracting State directly by registered letter with return receipt.

Article 28

(1) Where a claim for benefits under the legislation of one of the Contracting States has been submitted to an agency in the other Contracting State which is authorized to receive the claim for a corresponding benefit under the legislation applicable to it, the claim shall be deemed to have been submitted to the competent insurance authority. The above shall apply *mutatis mutandis* to other claims as well as to declarations and appeals.

(2) A claim to benefits under the legislation of one of the Contracting States shall be deemed to be a claim to a corresponding benefit under the legislation of the other Contracting State. The foregoing shall not apply if the claimant expressly requests that the determination of his entitlement under the legislation of the other Contracting State should be deferred, provided that he is permitted to do so under that legislation.

Article 29

Career consular authorities of one Contracting State shall be entitled, subject to the practices and procedures in force in the State of residence, to represent nationals of the sending State or take measures to ensure their appropriate representation before the tribunals or other authorities of the State of residence in order to request, in accordance with the laws and regulations of the State of residence, the adoption of provisional measures to safeguard the rights and interests of such nationals when, owing to their absence or for any other reason, they are unable to defend their rights and interests in due time.

CHAPTER 2. IMPLEMENTATION AND INTERPRETATION OF THE CONVENTION

Article 30

(1) The competent public authorities may agree on the administrative measures necessary for implementing this Convention. They shall inform each other of any changes in, and additions to, the legislation applicable to them as specified in article 2.

(2) For the purpose of implementing this Convention, the following liaison offices are hereby established:

In the Federal Republic of Germany:

- For sickness insurance: the Federal Association of Local Sickness Funds (Bundesverband der Ortskrankenkassen), Bonn;
- For accident insurance: the Federation of Trade Associations (Hauptverband der gewerblichen Berufsgenossenschaften e.V.), Bonn;
- For manual workers' disability/old-age insurance: the Swabia Land Insurance Institute (Landesversicherungsanstalt Schwaben), Augsburg;
- For salaried workers' disability/old-age insurance: the Federal Insurance Institute for Salaried Workers (Bundesversicherungsanstalt für Angestellte), Berlin;
- For miners' disability/old-age insurance: the Federal Miners' Insurance Association (Bundeskknappschaft), Bochum;
- For the supplementary insurance scheme for iron and steel workers: the Land Insurance Institute for the Saar (Landesversicherungsanstalt für das Saarland), Saarbrücken.

In the Republic of Tunisia:

- The National Pension and Social Welfare Fund (Caisse nationale de retraite et de prévoyance sociale — C.N.R.P.S.), Tunis, in respect of persons covered by its social insurance under the social welfare and pension schemes;
- The Ministry of Finance (Ministère des Finances), Tunis, in respect of persons belonging to the public sector who are covered by social insurance under the industrial accident and occupational disease scheme;
- The National Social Security Fund (Caisse nationale de sécurité sociale — C.N.S.S.), Tunis, in respect of other persons to whom this Convention applies.

Article 31

(1) Where a person who is to receive benefits under the legislation of one of the Contracting States in respect of an injury sustained in the territory of the other Contracting State is entitled, in accordance with the regulations of that State, to claim damages for such injury from a third party, the insurance authority of the first-mentioned Contracting State shall be subrogated in respect of the claim for damages in accordance with the legislation applicable to that insurance authority.

(2) Where both an insurance authority of one of the Contracting States and an insurance authority of the other Contracting State are entitled to claim damages in respect of similar benefits as a result of the same contingency, the insurance authority of one of the Contracting States shall, at the request of the other State, also assert the latter's claim for damages. The third party may discharge the claims of both insurance authorities by making payment to the one or to the other. The insurance authorities shall divide the payment between themselves in proportion to the benefits payable by each of them.

Article 32

Payments to be made under this Convention shall be made in accordance with the legislation in force in the two Contracting States and the agreements in force between them.

Article 33

(1) Where the insurance authority of one Contracting State has erroneously paid cash benefits, the amount paid in error may be withheld, for account of that insurance authority, from the subsequent payment of a comparable benefit under the legislation of the other Contracting State.

(2) Paragraph (1) shall apply *mutatis mutandis* in the event of the simultaneous payment of a sickness benefit under the legislation of one of the Contracting States and a disability/old-age pension under the legislation of the other Contracting State.

(3) Where the insurance authority of one Contracting State has made an advance payment in consideration of an entitlement to a benefit under the legislation of the other Contracting State, the amount paid shall be withheld from the benefit for account of that insurance authority.

(4) Where, under the legislation of one Contracting State, a person is entitled to a cash benefit in respect of a period for which he or his dependents 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 head office in the territory of the first-mentioned Contracting State.

(5) Withholding of payments under paragraphs (1) to (4) shall be effected in accordance with the legislation of the Contracting State applicable to the insurance authority withholding the amounts.

Article 34

(1) This Convention shall in no case confer any entitlement for a period prior to its entry into force.

(2) All insurance periods as well as all periods of employment, if any, completed under the legislation of one of the Contracting States before the entry into force of this Convention shall be taken into account for the purpose of determining entitlement to benefits under this Convention.

(3) Subject to the provisions of paragraph (1) above, entitlement shall be acquired under this Convention even in respect of a contingency which arose before the entry into force of the Convention.

(4) Any benefit which has not been determined or which has been suspended shall, at the request of the person concerned, be determined or restored as from the entry into force of this Convention, provided that entitlements determined earlier have not given rise to a lump-sum settlement.

(5) The entitlements of persons whose pension or annuity was determined before the entry into force of this Convention may be reviewed either at their request or on the initiative of the insurance authority, the provisions of this Convention being taken into account. In case of a review conducted on the initiative of the insurance authority, the date on which that authority starts the procedure shall, without prejudice to the provisions of article 28, paragraph (2), be deemed to be the date of submission of the claim in accordance with the legislation of the other Contracting State.

(6) If, as a result of the revision referred to in paragraph (5) above, the person concerned is not entitled to any pension (annuity) or is entitled only to a pension (annuity) that is lower than that last paid before the entry into force of this Convention, the amount of the pension (annuity) payable shall be the same as before.

(7) If the request referred to in paragraph (4) or (5) of this article is submitted within two years after the date of entry into force of this Convention, any entitlements conferred under this Convention shall be acquired as from that date, and any legislative provisions of the two Contracting States concerning the lapse or prescription of entitlement shall not apply to the persons concerned.

(8) If the request referred to in paragraph (4) or (5) above is submitted after the expiry of two years following the entry into force of this Convention, entitlements which have not been lost through lapse or prescription shall be acquired as from the date of submission of the request, subject to more favourable provisions of the legislation of a Contracting State.

Article 35

The Final Protocol annexed hereto shall form an integral part of this Convention.

Article 36

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

Article 37

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

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

Article 38

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

(2) If, as a result of denunciation, this Convention ceases to have effect, 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 a stay or residence abroad shall not be taken into account in respect of such entitlements.

(3) Entitlements which are in course of acquisition in respect of periods completed before the date on which denunciation takes effect shall not be cancelled as a result of the denunciation; subsequent preservation of such entitlements shall be determined by agreement or, in the absence of such agreement, by the legislation applied by the insurance authority concerned.

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

DONE at Tunis on 16 April 1984, in duplicate, in the German, Arabic and French languages, the three texts being equally authentic. In the event of disagreement as to the interpretation of the German text and the Arabic text, the French text shall prevail.

For the Federal Republic of Germany:

HANS KAHLE
AMBASSADOR

NORBERT BLÜM
Federal Minister for Labour and Social Affairs

For the Republic of Tunisia:

ELYES CASTLI
Ambassador, Director of Consular Affairs

MOHAMED ENNACEUR
Minister for Social Affairs

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TUNISIA ON SOCIAL SECURITY

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

1. *Article 2 of the Convention*

(a) 1. Part II, chapter 3, of the Convention shall not apply to contractual salaried persons belonging to the Tunisian public sector.

2. Part II, chapter 3, of the Convention shall not apply to the supplementary insurance scheme for iron and steel workers in force in the Federal Republic of Germany and farmers' old-age benefits.

(b) If under the legislation of one Contracting State, the requirements are met for the application both of the provisions of this Convention and of another agreement or supranational provision, the insurance authority of that Contracting State shall, in applying the provisions of this Convention, disregard the other agreement or supranational provision.

(c) The provisions of article 2, paragraph (2), of the Convention and those of sub-item (b) above shall not apply in so far as social security legislation which, in the case of the Federal Republic of Germany, derives from international agreements or from supranational legislation or legislation designed for the implementation thereof contains provisions governing insurance liability. This provision shall not entail any obligation for the Republic of Tunisia to provide benefits in respect of insurance periods for which German insurance is liable under a provision governing insurance liability.

(d) This Convention shall not affect obligations arising from conventions adopted by the International Labour Conference and in force in either or both of the Contracting States.

2. *Article 4 of the Convention*

(a) Provisions relating to insurance liability contained in international agreements between the Federal Republic of Germany and other States shall not apply to Tunisian nationals.

(b) The legislation of a Contracting State which guarantees the participation of insured persons and employers in self-management bodies of insurance authorities and associations, as well as in jurisdiction on social security, shall not be affected.

(c) Article 4 shall not apply to voluntary participation in German disability/old-age insurance in the case of persons residing or staying outside the territory of the Federal Republic of Germany.

3. *Article 5 of the Convention*

(a) The German legislation concerning benefits in respect of:

- Accidents sustained (occupational diseases contracted) at a time when the person concerned was not insured under federal law;
- Insurance periods not completed under federal law shall not be affected.

(b) The German legislation concerning medical, vocational and supplementary measures relating to rehabilitation adopted by disability/old-age insurance authorities shall not be affected.

4. *Article 10 of the Convention*

For persons who are employed on the date of the entry into force of the Convention, the period referred to in paragraph (2) above shall start with that date.

5. *Article 12 of the Convention*

(a) For the purpose of the application of German legislation, the provisions of paragraph (1) shall not apply to cases where a disability/old-age pension under the German legislation governing disability/old-age insurance coincides with an annuity under the Tunisian legislation governing insurance against industrial accidents and occupational diseases.

(b) Assimilation shall not apply to the reimbursement of contributions in connection with legal disability/old-age insurance.

6. *Article 13 of the Convention*

The provisions of article 13 shall apply *mutatis mutandis* to benefits which are payable under German legislation at the discretion of an insurance authority.

7. *Article 16 of the Convention*

Where there are grounds for applying, under paragraph (4) of this article, the German legislation concerning sickness insurance for pensioners, the insurance authority with which the person concerned was last insured shall be competent. If on that basis a general local sickness fund, an agricultural sickness fund or no insurance authority is competent, the person shall be insured under the General Local Sickness Fund (Allgemeine Ortskrankenkasse), Bonn.

8. *Article 17 of the Convention*

Where under German legislation the drawing of a pension under disability/old-age insurance affects the amount of entitlement to benefits under accident insurance, the same effect shall arise with regard to the drawing of a pension of the same kind under Tunisian legislation.

9. *Article 23 of the Convention*

For the purpose of the granting of the supplementary benefit under German legislation concerning miners' disability/old-age insurance, insurance periods reckonable in accordance with Tunisian legislation shall not be taken into account.

DONE at Tunis on 16 April 1984, in duplicate, in the German, Arabic and French languages, the three texts being equally authentic. In the event of disagreement as to the interpretation of the German text and the Arabic text, the French text shall prevail.

For the Federal Republic of Germany:

HANS KAHLE
Ambassador

NORBERT BLÜM
Federal Minister for Labour and Social Affairs

For the Republic of Tunisia:

ELYES CASTLI
Ambassador, Director of Consular Affairs

MOHAMED ENNACEUR
Minister for Social Affairs

ADDITIONAL PROTOCOL TO THE CONVENTION OF 16 APRIL 1984 BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TUNISIA ON SOCIAL SECURITY

The Federal Republic of Germany and the Republic of Tunisia,

Desiring to assure, in the implementation of the Convention on Social Security, mutual legal assistance and the settlement of differences between the two Contracting States regarding the interpretation or application of the Convention,

Have agreed on the following provisions:

Article 1

The tribunals of the Contracting States charged with the application of the legislation specified in article 2, paragraph (1), of the Convention and the provisions of the Convention on Social Security shall lend each other their good offices as if they were applying the legislation applicable to themselves. With the exception of out-of-pocket expenses, such assistance shall be free of charge.

Article 2

(1) Enforceable decisions of the tribunals and enforceable instruments of the insurance authorities or public authorities of a Contracting State concerning contributions or other amounts due under social insurance shall be recognized and enforced in the other Contracting State after being rendered enforceable there in so far as the legislation of the enforcing State so requires.

(2) Recognition and enforcement shall not be denied unless contrary to the public order of the Contracting State in which the decision or instrument is to be enforced.

(3) The procedure and effects of the grant of execution shall be governed by the legislation of the enforcing State. The copy of the decision or instrument must be provided with the order of enforcement.

Article 3

Disputes between the two Contracting States concerning the interpretation or application of the Convention and this Additional Protocol shall be settled through the diplomatic channel and, if need be, by a joint *ad hoc* commission.

Article 4

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

Article 5

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

(2) This Additional Protocol is part of the Convention; it shall enter into force on the same day as the Convention.

DONE at Tunis on 16 April 1984, in duplicate, in the German, Arabic and French languages, the three texts being equally authentic. In the event of disagreement as to the interpretation of the German text and the Arabic text, the French text shall prevail.

For the Federal Republic of Germany:

HANS KAHLE
Ambassador

NORBERT BLÜM
Federal Minister for Labour and Social Affairs

For the Republic of Tunisia:

ELYES CASTLI
Ambassador, Director of Consular Affairs

MOHAMED ENNACEUR
Minister for Social Affairs

ARRANGEMENT¹ RELATING TO THE IMPLEMENTATION OF THE CONVENTION OF 16 APRIL 1984² BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TUNISIA ON SOCIAL SECURITY

The Government of the Federal Republic of Germany and the Government of the Republic of Tunisia,

Pursuant to article 30, paragraph (1), of the Convention of 16 April 1984 between the Federal Republic of Germany and the Republic of Tunisia on Social Security,² hereinafter called "the Convention",

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1

The terms defined in the Convention are used in the following provisions with the same meaning as that attributed to them in the Convention.

Article 2

The liaison offices established under article 30, paragraph (2), of the Convention and the insurance authorities competent pursuant to article 15, paragraph (2), of this Arrangement shall be responsible, within the scope of their competence, for providing general information to the persons concerned with regard to the rights and obligations deriving from the Convention.

Article 3

(1) The liaison offices established under article 30, paragraph (2), of the Convention and the insurance authorities competent pursuant to article 15, paragraph (2), of this Arrangement shall agree, within the scope of their competence and after consultation with the competent public authorities, on the procedures for the application of the administrative and financial measures necessary and useful for implementing the Convention. Article 30, paragraph (1), of the Convention shall not be affected.

(2) The liaison offices established under article 30, paragraph (2), of the Convention and the insurance authorities competent pursuant to article 15, paragraph (2), of this Arrangement shall agree on the languages in which the forms used in the implementation of the Convention and of this Arrangement shall be drawn up and filled in.

Article 4

(1) The agencies referred to in article 25, paragraph (1), of the Convention shall, within the scope of their competence, communicate to one another, and to the

¹ Came into force on 29 September 1986, the date of receipt of the last of the notifications (effected on 22 July and 26 September 1986) by which the Parties informed each other that the required conditions had been fulfilled, with effect from 1 August 1986, the date of entry into force of the Convention in accordance with article 22.

² See p. 229 of this volume.

persons concerned the facts and supporting documents necessary for safeguarding the rights and obligations of the persons concerned which derive from the Convention and this Arrangement pursuant to the legislation specified in article 2, paragraph (1), of the Convention.

(2) A person who is required, under the legislation referred to in article 2, paragraph (1) of the Convention, under the Convention or under this Arrangement, to report certain facts to the insurance authority or to another agency shall also be so required in respect of analogous facts arising in the other Contracting State or under its legislation. This shall apply also where a person is required to present certain supporting documents.

Article 5

(1) In the cases referred to in articles 7 and 11 of the Convention, the competent insurance authority of the Contracting State whose legislation is applicable shall issue to the person concerned, on his request, a certificate confirming that he is subject to that legislation.

(2) In the Federal Republic of Germany, the sickness insurance authority shall issue such certificate for the other branches of insurance also. Where a person is covered only by accident insurance, the certificate shall be issued by the competent accident insurance authority.

(3) In the Republic of Tunisia, the certificate shall be issued by the National Social Security Fund (Caisse nationale de sécurité sociale — C.N.S.S.), Tunis.

Article 6

(1) Cash benefits to be paid by the insurance authority of one Contracting State to a person residing or staying in the territory of the other Contracting State shall be payable in the currency of the first-mentioned Contracting State.

(2) Cash benefits payable by a German insurance authority shall be validly paid to persons residing or staying in the territory of the Republic of Tunisia by being transferred in deutsche mark to an Authorized Tunisian Agent (Intermédiaire Agréé Tunisien), who shall remit the exchange value in Tunisian dinars to the entitled persons. For the conversion of deutsche mark into dinars, the official daily exchange rate fixed by the Central Bank of Tunisia (Banque Centrale de Tunisie) shall apply.

(3) Cash benefits payable by a Tunisian insurance authority shall be validly paid to persons residing or staying in the territory of the Federal Republic of Germany through the remittance in deutsche mark, by an authorized Tunisian agent, of the exchange value of the Tunisian dinar amount to a correspondent in the Federal Republic of Germany, who shall credit the entitled person therewith. For the conversion of dinars into deutsche mark, the official daily exchange rate fixed by the Central Bank of Tunisia shall apply.

(4) Amounts to be paid by an insurance authority of one Contracting State to an insurance authority of the other Contracting State shall be expressed in the currency of the insurance authority of the last-mentioned Contracting State.

(5) In the case of payments to be made by the insurance authority of one Contracting State pursuant to article 31 of the Convention and article 2 of the Additional Protocol to the Convention, paragraphs (1) to (3) above shall apply *mutatis mutandis*.

(6) Cash benefits shall be paid to recipients in the other Contracting State without the intervention of a liaison office of that Contracting State.

Article 7

Where personal data, or trade or business secrets, are transmitted from one Contracting State to the other Contracting State pursuant to the Convention or this Arrangement, the respective national legislation governing the protection of such data and secrets shall apply to both their transmittal and their use.

Article 8

In the case of application of the provisions of article 28 of the Convention, claims, declarations and appeals shall be forwarded without delay by the institution of the Contracting State to which they were submitted to the competent institution of the other Contracting State.

PART II. SPECIAL PROVISIONS

CHAPTER 1. SICKNESS INSURANCE

Article 9

To receive benefits in kind pursuant to articles 14 and 15 of the Convention, it is necessary to submit a certificate from the competent insurance authority relating to entitlement to those benefits.

Article 10

Any person wishing to receive cash benefits while staying or residing in the territory of the Contracting State in which the competent insurance authority does not have its head office shall, without delay, and in any case within seven days of the commencement of the loss of working capacity, submit to the insurance authority of the place of stay or residence, a certificate relating to such loss of working capacity. The insurance authority of the place of stay or residence shall verify and confirm the loss of working capacity of the said person as soon as possible, in the same manner as in the case of its own insured persons, and shall communicate its findings to the competent insurance authority not later than two weeks following the submission of the certificate.

Article 11

(1) In respect of the obligation to participate in an insurance scheme and qualification for voluntary insurance under the German sickness insurance scheme, insurance periods completed under Tunisian legislation shall be taken into account in so far as they do not coincide with insurance periods completed under German legislation.

(2) Where, under the German legislation governing sickness insurance, the obligation to participate in an insurance scheme is based on marriage to a person insured under the German sickness insurance scheme, marriage to a person insured under the Tunisian sickness insurance scheme shall be treated in the same manner.

Article 12

In case of application of Part II, Chapter 1, of the Convention, the following provisions shall apply:

1. The lump-sum maternity allowance granted under German legislation and the corresponding benefit (medical care) granted under Tunisian legislation shall be considered benefits in kind.

2. Medical examinations required by the legislation of one Contracting State for the grant of the benefits referred to in subparagraph 1 above shall be treated the same as analogous examinations provided for by the legislation of the other Contracting State.

Article 13

In case of application of article 16, paragraph (4), of the Convention, the following provisions shall apply:

1. Where a person in receipt of a German disability/old-age pension is customarily resident in the territory of the Republic of Tunisia, contributions for which he is liable by reason of the obligation to participate in the German sickness insurance scheme for pensioners shall be withheld from the pension by the competent German disability/old-age insurance authority for account of the competent German sickness insurance authority.

2. The legislation of a Contracting State providing that a pension applicant must himself pay, until the pension is granted, the compulsory insurance contributions for which he is liable by reason of the pension application shall not apply to the persons referred to in article 16, paragraph (4), of the Convention. No benefits shall be granted by reason of the pension application during the period between the filing of the application and the pension notice. Death grants and maternity allowances shall be provided once the pension application has been granted. If the pension application is granted, the insurance authority of the place of stay shall reimburse to the pensioner the costs incurred for benefits in kind during the period between the submission and grant of the pension application, on the same terms and in the same proportions as for benefits in kind granted under articles 14 and 15 of the Convention; article 15, paragraphs (5) and (6), of the Convention shall apply *mutatis mutandis*.

CHAPTER 2. ACCIDENT INSURANCE

Article 14

(1) The legislation of the Contracting State in which the insurance arises shall apply to the notice of an industrial accident (occupational disease).

(2) The notice shall be addressed to the competent insurance authority, which shall inform the insurance authority of the place of stay thereof without delay. The notice may also be addressed to the last-mentioned authority, which shall transmit it to the competent insurance authority without delay.

(3) The provisions of article 10 shall apply *mutatis mutandis*.

CHAPTER 3. DISABILITY/OLD-AGE INSURANCE

Article 15

(1) In so far as it is not yet regulated by German legislation, the settlement and award of benefits, with the exception of medical, vocational and supplementary

rehabilitation measures shall, within the framework of disability/old-age insurance of workers, be the responsibility of the liaison office established for that purpose,

(a) If insurance periods under German and Tunisian legislation have been completed or are to be taken into consideration, or

(b) If the beneficiary is resident in the territory of the Republic of Tunisia, or

(c) If the beneficiary resides as a Tunisian national outside the Contracting States.

(2) The competence of the German special insurance authorities shall not be affected.

Article 16

In case of application of article 23, subparagraph 2, of the Convention, the following provisions shall apply:

1. Insurance periods completed under Tunisian legislation shall not be taken into account in respect of the minimum number of years of insurance required for the calculation of the disability/old-age pension based on a minimum income in accordance with German legislation.

2. Where, by reason of employment subject to compulsory insurance, an insured person has received both remunerations in cash and remunerations in kind, such employment shall not be taken into consideration in accordance with Tunisian legislation for the determination of the conditions for the application of the German transitional legislation governing the calculation of pensions.

Article 17

The agencies of a Contracting State referred to in article 27, paragraph (1), of the Convention shall not reject applications and documents on the ground that they are written in the official language of the other Contracting State.

Article 18

Amounts payable under the Convention and this Arrangement may, with the exception of those specified in Article 19, be transferred from the territory of one Contracting State to the territory of the other Contracting State free of foreign-exchange restrictions.

Article 19

German nationals staying or residing in Tunisia may transfer contributions to a German insurance authority in accordance with the German legislation governing compulsory insurance and optional insurance, the foreign exchange regulations applicable in Tunisia being taken into account.

Article 20

The insurance authorities specified in article 30, paragraph (2), of the Convention and in article 15 of this Arrangement shall once a year, on December 31, prepare statistics concerning payments made into the other Contracting State. The data shall comprise, to the extent possible, the number and total amount of pensions and lump-sum payments, broken down according to type of pension. The statistics shall be exchanged.

PART III. FINAL PROVISIONS

Article 21

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

Article 22

This Arrangement shall enter into force as soon as the two Governments have notified one another that the requirements for entry into force in accordance with their national legal provisions have been fulfilled. It shall be implemented from the date of entry into force of the Convention.

DONE at Tunis on 16 April 1984, in duplicate in the German, Arabic, and French languages, the three texts being equally authentic. In the event of disagreement as to the interpretation of the German text and the Arabic text, the French text shall prevail.

For the Federal Republic of Germany:

HANS KAHLE
Ambassador

NORBERT BLÜM
Federal Minister for Labour and Social Affairs

For the Republic of Tunisia:

ELYES CASTLI
Ambassador, Director of Consular Affairs

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