

No. 29543

**FEDERAL REPUBLIC OF GERMANY
and
POLAND**

**Convention on social security (with final protocol). Signed at
Warsaw on 8 December 1990**

Authentic texts: German and Polish.

Registered by Germany on 28 January 1993.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
POLOGNE**

**Convention de sécurité sociale (avec protocole final). Signé à
Varsovie le 8 décembre 1990**

Textes authentiques : allemand et polonais.

Enregistré par l'Allemagne le 28 janvier 1993.

[TRANSLATION — TRADUCTION]

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

The Federal Republic of Germany and the Republic of Poland,

Considering that the continuing political and economic integration of Europe and the problems resulting therefrom in the area of social security call for new solutions, and

Desiring, in view of the particular features existing between both States, to organize their relations in that area in accordance with the principles applied under comparable regulations within the European Community and in most Western European States,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

1. “Legislation” means the laws, regulations, statutory instruments and other legislative provisions that relate to the branches of social security specified in article 2, paragraph (1);

2. “Competent public authority” means, in the case of the Federal Republic of Germany, the Federal Minister of Labour and Social Affairs; in the case of the Republic of Poland, the Minister of Labour and Social Policy, but the Minister of Health and Social Welfare with regard to benefits in kind;

3. “Insurance authority” means the institute or authority responsible for the implementation of the legislation specified in article 2, paragraph (1);

4. “Competent insurance authority” means the insurance authority which is competent under the applicable legislation;

5. “Periods of coverage” means contribution periods or equivalent periods which under the applicable legislation have been established or are recognized or treated as claim qualifying periods;

6. “Cash benefit” or “pension” means a cash benefit or pension, including any increase therein and any supplement or additional allowance payable therewith;

7. “Sickness insurance” means, in the case of the Federal Republic of Germany, sickness insurance and coverage for working mothers in so far as it relates to

¹ Came into force on 1 October 1991, i.e., the first day of the month following the expiry of the month of the exchange of the instruments of ratification, which took place at Bonn on 30 September 1991, in accordance with article 31 (1) and (2).

cash benefits and benefits in kind which the sickness insurance authority is required to grant during pregnancy and following delivery; in the case of the Republic of Poland, sickness and maternity benefits;

8. “Accident insurance” means, in the case of the Federal Republic of Germany, industrial accident and occupational disease insurance; in the case of the Republic of Poland, the special pension scheme for employed persons covering industrial accidents and occupational diseases;

9. “Pension insurance” means, in the case of the Federal Republic of Germany, old-age disability and survivorship pension insurance; in the case of the Republic of Poland, the old-age, disability and survivorship benefits scheme;

10. “Place of residence” or “resident” means, in the case of the Federal Republic of Germany, the place of ordinary residence or ordinarily resident, such residence necessarily denoting lawful abode of indefinite duration; in the case of the Republic of Poland, the place of permanent residence or permanently resident;

11. “Place of stay” or “stay” means the place of actual residence or actually reside;

12. “Place of ordinary residence” or “ordinarily resident” means, in the case of the Federal Republic of Germany, the place of actual and not merely temporary residence or actually and not merely temporarily resident; in the case of the Republic of Poland, the place of actual and permanent residence or actually and permanently resident;

13. “Frontier commuter” means a person to whom the legislation of one Contracting State applies by reason of his occupation in the territory of that State and who is resident in the territory of the other Contracting State and normally returns there at least once per week;

14. “Employee on assignment” means an employed person who is temporarily assigned by his employer to the territory of the other Contracting State and is remunerated by that employer.

Article 2

This Convention shall apply:

In respect of the Federal Republic of Germany, to:

- (a) Sickness insurance,
- (b) Accident insurance,
- (c) Pension insurance;

In respect of the Republic of Poland, to:

- (a) Sickness and maternity benefits for employed persons,
- (b) Accident insurance,
- (c) Old-age benefits insurance for employed persons, including the benefits schemes for mineworkers and railway workers.

(2) This Convention shall apply to all amendments to the legislation in the branches specified in paragraph (1).

(3) If, in addition to the conditions for the application of the present Convention, the conditions for the application of another convention or of a supranational

arrangement are also fulfilled under the legislation of one Contracting State, the insurance authority of that Contracting State shall, in the application of this Convention, disregard the other convention or supranational arrangement.

(4). Paragraph (3) shall not apply if the legislation on social security arising for the Contracting States out of international agreements or supranational law or serving for the implementation thereof contains provisions relating to the apportionment of insurance burdens.

Article 3

Except as otherwise provided herein, this Convention shall apply to persons who are or have been subject to the legislation of one of the Contracting States and to relatives and surviving dependants who derive their rights from those persons in regard to sickness, accident or pension insurance.

Article 4

Except as otherwise provided in this Convention, each Contracting State shall, in the application of its legislation, treat nationals of the other Contracting State on equal terms with its own nationals in so far as they are ordinarily resident in the territory of one Contracting State.

Article 5

Except as otherwise provided in this Convention, cash benefits in cases of disability or old age or due to surviving dependants and also pensions and lump-sum cash benefits in cases of industrial accidents (occupational diseases) shall also be payable if the claimant is ordinarily resident in the territory of the other Contracting State and that person is a national of the Contracting States.

PART II

SPECIAL PROVISIONS

Chapter 1

SICKNESS INSURANCE

Article 6

(1) Benefits in kind under sickness insurance shall also be received by the following persons:

1. Employed persons who are insured in one Contracting State and are resident in the other Contracting State as employees on assignment;
2. Frontier commuters;
3. Relatives of employed persons and of frontier commuters, in so far as the relatives are resident in the Contracting State in which the insurance cover does not exist.

(2) Paragraph (1) shall not apply to relatives of employees on assignment.

Article 7

(1) Article 6 shall apply to a person in regard to whom the insured event arises during a temporary stay in the territory of the other Contracting State but only if he requires the immediate provision of benefits by reason of his condition.

(2) Article 6 shall not apply to a person who, subsequent to the occurrence of the insured event, transfers his residence to the territory of the other Contracting State, or in regard to whom it is foreseeable, prior to the transfer of his residence, that the provision of benefits is required.

(3) If, under the legislation of both Contracting States, benefits in kind are to be granted to a person resident in one Contracting State, the entitlement under the legislation of the other Contracting State shall be suspended.

(4) Paragraphs (1) and (2) shall not apply to frontier commuters or in respect of maternity benefits.

Article 8

(1) If a person who is eligible for benefits in kind under article 6 is resident in the territory of the other Contracting State, the benefits in kind shall be granted by the insurance authority of the place of stay. The insurance authority of the place of stay shall, in regard to sickness insurance, be:

In the Federal Republic of Germany: The general local health insurance fund which is competent for the place of stay;

In the Republic of Poland: The social health service institute which is competent for the place of stay.

(2) With regard to the provision of the benefits in kind, the legislation valid for the insurance authority of the place of stay shall be applicable, with the exception of legislation concerning the duration of the benefit provision, the categories of relatives to be taken into consideration and the related legislation concerning proceedings for the settlement of benefit disputes.

(3) Prostheses and other costly benefits in kind shall, except in cases of dire emergency, be granted only if the competent insurance authority so consents. A dire emergency shall be deemed to exist if the granting of the benefit cannot be delayed without seriously jeopardizing the life or health of the person concerned.

(4) Persons and institutions concluding contracts with the insurance authorities specified in paragraph (1) concerning the provision of benefits in kind to persons insured with those insurance authorities, and their relatives, shall be required to grant benefits in kind also to the persons referred to in article 6, under the same conditions, as if those persons were insured with the insurance authorities specified in paragraph (1) or were relatives of such insured persons, and as if the contracts extended to include those persons.

Article 9

(1) The competent insurance authority shall refund to the insurance authority of the place of stay the amounts actually disbursed by it in individual cases, in accordance with article 8, with the exception of administrative costs.

(2) The competent public authorities may, at the proposal of the insurance authorities concerned, agree, with a view to simplifying administrative formalities, that in all cases or for certain categories of cases the amounts disbursed in accordance with article 8 shall be refunded in lump sums.

(3) If the lump-sum payments are based on average disbursements of the insurance authority of the place of stay which relate to the claim entitlement period or to the benefit period, the duration of the benefit provision shall, notwithstanding article 8, paragraph (2), be determined by the legislation to which the insurance authority of the place of stay is subject. If the lump-sum payments are based on average amounts which are ascertained taking into account the disbursements of the insurance authority of the place of stay for eligible relatives, the categories of relatives to be taken into consideration shall, notwithstanding article 8, paragraph (2), be determined by the legislation to which the insurance authority of the place of stay is subject. If the benefits in kind referred to in article 8, paragraph (3), are included in the lump-sum payments, this stipulation shall not apply.

Article 10

Cash benefits under sickness insurance shall also be payable under the legislation of one Contracting State to the persons referred to in article 6, paragraph (1), if they are resident in the territory of the other Contracting State and are entitled to benefits in kind.

Chapter 2

ACCIDENT INSURANCE

Article 11

(1) If the legislation of one Contracting State provides that, in the assessment of the degree of the reduction in earning capacity and in the establishment of entitlement to benefits following an industrial accident (occupational disease) within the meaning of that legislation, other industrial accidents (occupational diseases) are to be taken into account, this shall also apply to industrial accidents (occupational diseases) covered under the legislation of the other Contracting State as if they had been covered under the legislation of the first-mentioned Contracting State. Industrial accidents to be taken into account under other laws as accidents or as other compensation claims shall be deemed equivalent to the industrial accidents to be taken into account hereunder.

(2) The insurance authority liable for payment of compensation in respect of the insured event shall determine the benefit due from it according to the degree of the reduction in earning capacity resulting from the industrial accident (occupational disease) which that insurance authority has to take into account under the legislation to which it is subject.

(3) German legislation concerning benefits due by reason of industrial accidents (occupational diseases) which did not arise in the territory of the Federal Republic of Germany and concerning benefits in respect of industrial accidents (occupational diseases) for which compensation is payable under aliens' pension law shall not be affected.

Article 12

(1) For the purpose of determining eligibility for benefits by reason of an occupational disease, the insurance authority of one Contracting State shall also take into account any occupations which have been pursued in the territory of the other Contracting State and which were of a type capable of giving rise to that

disease. If, in such cases, eligibility for benefits exists under the legislation of both Contracting States, the benefits in kind and cash benefits shall, with the exception of pensions, be granted solely in accordance with the legislation of the Contracting State in whose territory the person is ordinarily resident. If entitlement to a pension exists under the legislation of one Contracting State, the insurance authority shall pay only the portion that corresponds to the ratio which the duration of the occupations pursued in the territory of its own Contracting State bears to the duration of the occupations to be taken into account in accordance with the first sentence of this paragraph; the foregoing shall also apply in respect of the recalculation of a pension by reason of a worsening of the occupational disease.

(2) Paragraph (1) shall also apply to the granting of surviving dependants' pensions and allowances.

Article 13

(1) A person who, under the legislation of one Contracting State, is eligible for benefits in kind under accident insurance by reason of an industrial accident or occupational disease shall receive benefits in kind also in the event of residence in the territory of the other Contracting State.

(2) Paragraph (1) shall apply to a person who transfers his residence to the other Contracting State during the medical treatment but only if the competent insurance authority has previously consented to the change of residence. Consent may be given subsequently if, for reasonable cause, the person did not obtain it in advance.

(3) Paragraph (2) shall not apply to frontier commuters.

Article 14

(1) If a person who is eligible for benefits in kind in accordance with article 13 is resident in the territory of the other Contracting State, the benefits in kind shall be granted by the insurance authority of the place of stay. The insurance authority of the place of stay shall be:

In the Federal Republic of Germany: The accident insurance authority which would be competent if the entitlement to benefits was to be determined under German legislation;

In the Republic of Poland: The social health service institute which is competent for the place of stay.

(2) With regard to the provision of the benefits in kind, the legislation valid for the insurance authority of the place of stay shall be applicable.

(3) Article 8, paragraphs (3) and (4), shall apply *mutatis mutandis*.

Article 15

(1) The competent insurance authority shall refund to the insurance authority of the place of stay the amounts actually disbursed by it in individual cases, in accordance with article 14, with the exception of administrative costs.

(2) The competent public authorities may, at the proposal of the insurance authorities concerned, agree, with a view to simplifying administrative formalities, that in all cases or for certain categories of cases the amounts disbursed shall be refunded in lump sums.

Article 16

Short-term cash benefits under accident insurance shall also be payable if the claimant is resident in the territory of the other Contracting State.

Chapter 3

PENSION INSURANCE

Section 1

BILATERAL PROVISIONS

Article 17

(1) For the purpose of establishing eligibility for benefits under the legislation of one Contracting State, if periods of coverage have been completed in both Contracting States, the periods of coverage which under the legislation of the other Contracting State are creditable and do not fall within the same period shall also be taken into account. Periods of coverage to be taken into account under Polish legislation shall in such cases be credited under the miners' pension insurance scheme of the Federal Republic of Germany if they have been completed in the Polish benefits scheme for mineworkers. Periods of coverage to be taken into account under German legislation shall be credited under the benefits scheme for mineworkers of the Republic of Poland if they have been completed in the German miners' pension insurance scheme.

(2) No entitlement to a pension under the legislation of one Contracting State shall arise out of this Convention if a minimum period of coverage of six months has not been completed under that legislation and if entitlement to a pension does not exist solely by reason of the completed period of coverage.

(3) The periods referred to in paragraph (2) shall be taken into account by the competent insurance authority of the other Contracting State in the computation of the pension due from it.

Article 18

(1) If the requirements for entitlement to benefits are satisfied, the competent insurance authority shall grant a pension whose amount in principle corresponds to the ratio which the periods of coverage completed under its legislation bears to the aggregated periods of coverage. For this purpose, that insurance authority shall ascertain the amount of the pension payable by it in accordance with the legislation to which it is subject and with the following provisions.

(2) For the computation of the German pension, bases of assessment and remuneration points shall be determined solely by reason of the periods of coverage to be taken into account under German legislation for pension calculation purposes.

(3) For the computation of the Polish pension, the Polish insurance authority shall determine the basis of assessment in application of Polish legislation. It shall then calculate the theoretical amount of the pension to which the claimant would be entitled if the aggregated periods of coverage had been completed under the legislation to which that insurance authority is subject. The Polish insurance authority shall thereupon ascertain the amount of pension actually payable according to the

ratio between the periods of coverage completed under its legislation and the aggregated periods of coverage. If entitlement to an old-age pension exists, it shall pay at least the amount of the pension due by reason of the periods of coverage completed under its legislation alone and by reason of the application of its legislation.

Section II

PENSION INSURANCE UNDER GERMAN LEGISLATION

Article 19

(1) Periods of coverage which have been completed under Polish legislation and are not to be taken into account under the miners' pension insurance scheme shall be credited under the salaried employees' pension insurance scheme if a corresponding occupation was last pursued during those periods, otherwise they shall be credited under the wage-earners' pension insurance scheme.

(2) If it is an eligibility requirement under German legislation that continuous underground work or equivalent work has been performed, the German insurance authority shall take into account the periods of coverage completed under Polish legislation only in so far as similar work was performed during those periods. The benefit supplement shall in such cases be determined on the basis of the ratio which the German continuous underground work bears to the total work completed underground.

(3) For persons who are ordinarily resident in the Republic of Poland, article 5 shall apply in respect of a pension due by reason of reduced earning capacity under German legislation only if entitlement exists independently of the prevailing labour market situation.

(4) German legislation concerning benefits due by reason of periods of coverage which have not been completed in the territory of the Federal Republic of Germany and concerning benefits in respect of periods of coverage which are creditable under aliens' pension law shall not be affected.

(5) Article 17, paragraph (1), shall apply *mutatis mutandis* to benefits whose provision under German legislation is at the discretion of one insurance authority.

(6) Article 5 shall not apply to rehabilitation benefits under German pension insurance.

(7) No reimbursement of contributions made to the German pension insurance scheme may be claimed if the right to membership in a voluntary insurance scheme does not exist under German legislation.

Section III

PENSION INSURANCE UNDER POLISH LEGISLATION

Article 20

(1) For persons who are ordinarily resident in the Federal Republic of Germany, article 5 shall apply in respect of a pension due by reason of reduced earning capacity under Polish legislation only if entitlement exists independently of the prevailing labour market situation.

(2) Article 5 shall not apply to periods of coverage completed outside the territory of the Republic of Poland unless contributions in respect of such periods have been paid to a Polish insurance authority.

(3) Article 5 shall not apply to benefits whose provision under Polish legislation is at the discretion of the competent insurance authority.

(4) There shall be no reimbursement of contributions made to the Polish pension insurance scheme.

PART III

MISCELLANEOUS PROVISIONS

Article 21

(1) For the purpose of implementing this Convention:

(a) The competent public authorities shall communicate directly with each other;

(b) The competent public authorities may agree upon the measures required for such purpose;

(c) The competent public authorities shall inform each other of the prevailing legislation in the field of social insurance and of all subsequent amendments.

(2) The following liaison offices shall be established for the purpose of implementing the Convention:

— In the Federal Republic of Germany:

For sickness insurance, the *AOK-Bundesverband*, Bonn;

For accident insurance, the *Hauptverband der gewerblichen Berufsgenossenschaften e.V.*, Sankt Augustin;

For wage-earners' pension insurance, the *Landesversicherungsanstalt Berlin*, Berlin;

For salaried employees' pension insurance, the *Bundesversicherungsanstalt für Angestellte*, Berlin;

For miners' pension insurance, the *Bundesknappschaft*, Bochum;

— In the Republic of Poland:

With regard to benefits in kind, the Ministry of Health and Social Welfare;

With regard to other matters, the Social Security Institute, Warsaw.

(3) Unless already provided for under German legislation, the liaison office established in respect of wage-earners' pension insurance shall be responsible for determining benefits under such insurance, with the exception of rehabilitation benefits, if:

(a) Periods of coverage have been completed or are creditable under German and Polish legislation, or

(b) The claimant is ordinarily resident in the territory of the Republic of Poland, or

(c) The claimant is ordinarily resident as a Polish national outside the Contracting States.

The areas of competence of the Federal Railways Insurance Institute [*Bundesbahnversicherungsanstalt*] and of the Seamen's Insurance Fund [*Seekasse*] shall not be affected.

Article 22

(1) The public and insurance authorities shall render to each other free of charge, if necessary through the liaison offices, administrative and legal assistance in the implementation of this Convention and in the settlement of disputes arising in connection with this Convention.

(2) The public and insurance authorities shall, upon request, transmit to each other free of charge, if necessary through the liaison offices, information and supporting documentation concerning employment and insurance developments in the territory of the other State.

(3) The competent agencies and persons resident in the territory of the other State may correspond directly with each other. Judgements, decisions and other documents, service of which is required, may be served by registered letter with return receipt.

Article 23

Documents, in particular applications, notices and appeals, may be drawn up in German or Polish and may not be rejected by reason of the choice of one of the two languages.

Article 24

Certificates, papers and other documents that are to be submitted in connection with the application of this Convention shall not require authentication by diplomatic or consular missions.

Article 25

With regard to the transmission of personal data and of trade or business secrets by virtue of this Convention or of any agreement relating to its implementation, the respective domestic data protection law shall apply. Such data may not be disclosed by the recipient without authorization and may be used solely for the purpose of implementing this Convention and the legislation to which it relates.

Article 26

(1) If an application for a benefit under the legislation of one Contracting State has been filed with an agency in the other Contracting State which is authorized to accept applications for corresponding benefits under the legislation to which that agency is subject, the application shall be deemed to have been filed with the competent insurance authority. The foregoing shall apply *mutatis mutandis* to other applications and also to notices and appeals.

(2) The applications, notices and appeals shall be forwarded without delay by the agency of the Contracting State with which they were filed to the competent agency of the other Contracting State.

(3) An application for benefits under the legislation of one Contracting State shall be deemed to be an application for a corresponding benefit under the legislation of the other Contracting State. The foregoing shall not apply if the applicant expressly requests that the establishment of entitlements acquired under the legislation of the other Contracting State be deferred in cases where, under the legislation of that Contracting State, he can determine the date which is to be applicable for the fulfilment of the benefit eligibility requirements.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 27

(1) This Convention shall, with regard to pension and accident insurance, apply to all entitlements arising by reason of periods of coverage and industrial accidents (occupational diseases) completed or occurring after 31 December 1990 in the territory of either Contracting State. It shall further apply to entitlements of persons who after 31 December 1990 transfer their place of residence to or re-establish their residence in the territory of the other Contracting State or have their place of residence in a third State. With regard to sickness insurance, the Convention shall apply also to insured events which arose prior to 1 January 1991.

(2) Entitlements acquired by and rights accruing to persons in one Contracting State prior to 1 January 1991 by virtue of the Agreement of 9 October 1975 between the Federal Republic of Germany and the Polish People's Republic on pension insurance and accident insurance (Agreement of 1975)¹ shall not be affected by this Convention provided that such persons continue to have their place of residence in the territory of that Contracting State after 31 December 1990. With regard to those persons' entitlements under pension and accident insurance, the provisions of the Agreement of 1975 shall be applicable; in such cases, the valid legislation as regards eligibility requirements and benefit amounts shall be that applying, at the respective place of residence, to periods of coverage and to industrial accidents (occupational diseases) which were completed or occurred there. With regard to entitlements acquired and rights accruing under pension and accident insurance, as at 2 October 1990, by virtue of the Treaty of 13 July 1957 between the Polish People's Republic and the German Democratic Republic on cooperation in social policy (Treaty of 1957)², the valid legislation shall be that applying to periods of coverage and to industrial accidents (occupational diseases) which had been completed or occurred at the place of residence applicable as at 2 October 1990.

(3) Entitlements and rights accruing under pension and accident insurance by virtue of the Agreement of 1975 in respect of periods of coverage completed up to the time of entry shall be acquired also by persons who entered the other Contracting State prior to 1 January 1991, had requested the transfer of their place of residence to the other Contracting State by that date, and have since then resided there without interruption, provided that they were resident in that Contracting State at the time of occurrence of the insured event and at the latest from 30 June 1991 onwards. In that respect, the second sentence of paragraph (1) shall not apply.

¹ United Nations, *Treaty Series*, vol. 1016, p. 237.

² *Ibid.*, vol. 319, p. 229.

(4) Entitlements and rights accruing under pension and accident insurance by virtue of the Agreement of 1975 in respect of periods of coverage completed up to the time of entry shall be acquired also by persons transferring their place of residence to the other Contracting State prior to 1 July 1991, if the transfer of their place of residence did not occur prior to 1 January 1991 for reasons not attributable to those persons. In that respect, paragraph (1) shall not apply.

(5) The Treaty of 1957 has expired. Pensions paid on the basis of that Treaty shall continue to be paid in accordance with its provisions.

Article 28

(1) Article 7 to article 10, paragraph (1), of the Agreement of 25 April 1973 between the Federal Republic of Germany and the Polish People's Republic concerning social insurance for employees temporarily assigned to the territory of the other State¹ shall cease to be in force upon the entry into force of this Convention.

(2) Periods of coverage relating to Polish workers, within the meaning of the Agreement of 5 September 1988 between the Government of the German Democratic Republic and the Government of the Polish People's Republic on cooperation in the employment of Polish workers in enterprises of the German Democratic Republic, which have been completed by virtue of that Agreement shall be deemed to be periods of coverage under Polish legislation.

Article 29

(1) This Convention shall not establish any entitlement to the provision of pension benefits for the period prior to 1 January 1991; nor shall it establish any entitlement to the provision of benefits in kind, cash benefits under sickness insurance or short-term cash benefits under accident insurance for the period prior to its entry into force.

(2) In the application of this Convention, relevant facts existing prior to its entry into force under the legislation of the Contracting States shall be taken into account.

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

(4) If, upon the entry into force of the Convention, a pension is due to a person ordinarily resident outside the Contracting States, the Convention shall not affect the payment of such pension for the period subsequent to its entry into force. The foregoing shall apply also to insured events arising immediately thereafter.

(5) To the extent that pensions were not provided to Poland prior to the entry into force of the Agreement of 1975, they shall, with effect from 1 January 1991, be provided to Poland subject to the more specific provisions of the Final Protocol.

Article 30

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

Article 31

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

¹United Nations, *Treaty Series*, vol. 951, p. 331.

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

Article 32

(1) This Convention is concluded for an indefinite period. Either Contracting State may denounce it in writing subject to giving three months' notice to take effect at the end of any calendar year.

(2) If the Convention is terminated following denunciation, its provisions shall continue to apply to entitlements to benefits acquired up to that time. Restrictive legislation concerning 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.

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

DONE at Warsaw, on 8 December 1990 in two original copies, one in the German language and one in the Polish language, both texts being equally authentic.

For the Federal Republic of Germany:

GÜNTER KNACKSTEDT

NORBERT BLÜM

For the Republic of Poland:

JACEK KUROŃ

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE FEDERAL
REPUBLIC OF GERMANY AND THE REPUBLIC OF POLAND 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 Poland, the plenipotentiaries of both Contracting States declare that agreement has been reached on the following:

1. *Ad article 4 of the Convention:*

Equal treatment shall not apply to voluntary membership in a pension insurance scheme.

2. *Ad articles 4 and 5 of the Convention:*

The Federal Republic of Germany shall, in the application of German legislation, treat the following persons on equal terms with nationals of the Contracting States, in accordance with the agreements specified below which have been signed by it:

(a) Refugees within the meaning of the Convention of 28 July 1951¹ and the Protocol of 31 January 1967 relating to the Status of Refugees,² if they are ordinarily resident in the territory of one Contracting State;

(b) Stateless persons within the meaning of the Convention of 28 September 1954 relating to the Status of Stateless Persons,³ if they are ordinarily resident in the territory of one Contracting State;

(c) Relatives and surviving dependants of persons referred to in (a) and (b) above, in so far as they derive their rights from those persons and are ordinarily resident in the territory of one Contracting State.

3. *Ad articles 10 and 16 of the Convention:*

(a) With regard to entitlement to cash benefits under sickness insurance or to short-term cash benefits under accident insurance, an insured person who is resident in the territory of the other Contracting State shall submit to the insurance authority of the place of stay, within three days, a certificate of incapacity for work issued by the attending physician;

(b) The insurance authority of the place of stay shall carry out the administrative checks or medical examinations which are necessary in accordance with its legislation and shall inform the competent insurance authority without delay;

(c) If the incapacity for work continues beyond the expected duration, subparagraphs (a) and (b) above shall apply *mutatis mutandis*;

(d) The competent insurance authority shall in all cases reserve the right to have the person concerned examined by a physician of its choice;

(e) The competent insurance authority alone shall decide whether and, if applicable, for what period the incapacity for work is admissible on the basis of the documents transmitted to it. It shall pay the appropriate benefits directly to the

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

beneficiary and shall inform the insured person and also the insurance authority of the place of stay.

4. *Ad article 17, paragraph (1), of the Convention:*

The provisions laid down in the second and third sentences in regard to the miners' pension insurance scheme of the Federal Republic of Germany shall apply *mutatis mutandis* to the mining insurance scheme in the territory which acceded to the Federal Republic of Germany on 3 October 1990.

5. *Ad the first and second sentences of article 27, paragraph (1), of the Convention:*

With regard to entitlements to pension benefits arising after 31 December 1990, the provisions of the Agreement of 1975 shall remain valid until the entry into force of this Convention.

6. *Ad article 29, paragraph (5), of the Convention:*

The stipulation shall apply to cases where a pension benefit was not provided to Poland prior to the entry into force of the Agreement of 1975 owing to the fact that German legislation did not provide for the payment of such benefits in specific territories. In these cases, persons in regard to whom an old-age or survivorship insurance claim arose or a disability claim was established with binding force at the latest upon the entry into force of the Agreement of 1975 shall be entitled to payment of the pension to Poland, for the period from 1 January 1991 onwards. With regard to the payment of the pension benefits, the stipulations valid on 2 October 1990 in the Federal Republic of Germany concerning the provision of benefits under pension insurance to aliens abroad shall apply to all claimants. With regard to the establishment of eligibility requirements and the pension amount, the applicable stipulations of pension law shall be those valid on the day prior to the entry into force of the Agreement of 1975 in the latter's sphere of application as existing on the German side up to 2 October 1990. If the pension had not been determined by that time, the corresponding valid legislation shall be applicable with regard to the amount thereof.

DONE at Warsaw, on 8 December 1990 in two original copies, one in the German language and one in the Polish language, both texts being equally authentic.

For the Federal Republic of Germany:

GÜNTER KNACKSTEDT

NORBERT BLÜM

For the Republic of Poland:

JACEK KUROŃ
