



European Convention on Social Security

Paris, 14.XII.1972

Annex VII – Particular measures for the application of the legislation of the Contracting Parties*

(Article 72, paragraph 1)

This text was prepared according to the decision taken by the European Social Security Committee (CDSS) during its 37th Meeting (21-24 May 1991), decision of which the Committee of Ministers took note during the 461st meeting of the Ministers' Deputies in September 1991:

"40. Consequently, the CDSS instructed the Secretariat to prepare and publish at appropriate intervals the text of the official annexes containing the text adopted by the Committee of Ministers in 1972, and modified by the Committee of Ministers in 1977, as amended since only by the Contracting Parties to the Convention. In this document the distinction between the annexes relating to Contracting Parties to the Convention and those relating to other member States, unchanged since the Convention was drafted, should be clearly drawn."

For this purpose, appendices relating to Parties are typed in bold, the others in italic characters.

I. Application of the legislation of Austria

A. Application of Austrian legislation concerning sickness insurance, insurance against occupational injuries and diseases and pensions insurance

- 1. The provisions of Article 8, paragraph 1, of this Convention do not affect the provisions of the bilateral conventions between Austria and other States which govern insurance liabilities.**
- 2. The provisions of Article 8, paragraph 1, of this Convention shall apply with regard to the provisions of Austrian legislation concerning the taking into account of periods of war service and periods considered as such only to nationals of the other Contracting Parties who were Austrian nationals immediately before 13 March 1938.**
- 3. The benefits provided under Austrian pension insurance shall be calculated in accordance with the provisions of Article 29, paragraph 5, of this Convention directly, solely on the bases of the periods completed under Austrian legislation, taking into account the following provisions:**

(*) Status as of 1 January 2014.

a. Benefits or parts of benefits, the amount of which does not depend on the duration of the periods of insurance completed, shall be payable in proportion to the ratio of the Austrian periods of insurance to thirty years, but shall not exceed the full amount.

b. Where periods after the contingency arises are to be taken into account for the calculation of invalidity or survivor's benefits, such periods shall be taken into account only in proportion to the ratio of the Austrian periods of insurance to two-thirds of the number of full calendar months between the date on which the person concerned reached the age of sixteen and the date on which the contingency occurred, but shall not exceed the full period.

c. Sub-paragraph (a) of this paragraph shall not apply to:

i. benefits resulting from supplementary insurance;

ii. means-tested benefits or parts of benefits designed to ensure a minimum income.

4. Entitlement to benefits by virtue of Austrian legislation shall not be affected by reason of this Convention where a person has suffered in his social security situation for political or religious reasons or for reasons of his descent.

5. The provisions of Article 51, paragraphs 1 and 2, of this Convention concerning the adding together of periods are not applicable for the acquisition of the right to parental leave benefits.

B. Application of Austrian legislation concerning unemployment insurance

1. The provisions of Article 8, paragraph 1, of this Convention do not affect the provisions of Austrian legislation concerning emergency benefits.

2. The provisions of Article 51, paragraphs 1 and 2, of this Convention concerning the adding together of periods are not applicable for the acquisition of the right to unpaid leave benefits.

II. Application of the legislation of Belgium

1. For the application of Article 29 of the Convention, the periods of old-age insurance completed under Belgian legislation prior to 1 January 1945 shall likewise be considered to be periods of insurance completed under the Belgian legislation relating to the general invalidity scheme and to the scheme for seamen.

2. For the application of Article 29 of the Convention, the periods of old-age insurance completed by non-employed persons prior to the entry into force of the legislation on incapacity for work of self-employed persons shall be considered to be periods completed under the latter legislation.

3. In order to determine whether the preconditions to which the Belgian legislation makes the right to unemployment benefits subject are fulfilled, only days of gainful occupation shall be taken into consideration; nevertheless, assimilated days within the meaning of that legislation shall be taken into consideration where the days preceding them were days of gainful occupation.

III. Application of the legislation of Denmark

With regard to unemployment benefits, the Government of Denmark undertakes to encourage the approved Unemployment Funds to apply the provisions of this Convention in so far as they are in force in respect of Denmark.

IV. Application of the legislation of France

1. The principle of equality of treatment set forth in Article 8 of this Convention does not apply to Act No. 65-555 of 10 July 1965 which provides for Frenchmen who follow or who have followed abroad a salaried or non-salaried occupational activity the possibility of adhering to the voluntary old-age insurance scheme.

2. The right to allowances for elderly employed persons, old-age non-contributory allowances for persons other than employed persons and to the special allowance is granted, in application of this Convention, only for persons who prove that they have resided in France for at least ten years between the age of sixteen and the age of entitlement to the said allowances, including five consecutive years immediately preceding the lodging of the claim.

3. The provisions of this Convention do not affect the provisions of French legislation by virtue of which periods of occupational activity completed in French territory are taken into consideration for entitlement to allowances for elderly employed persons and to old-age non-contributory allowances for persons other than employed persons.

4. The special allowances and the cumulative allowances provided under the social security scheme for miners are only provided for persons who work in French mines.

5. The principle of equality of treatment set forth in Article 8 of this Convention does not apply to the legislation concerning income guarantees for employed persons who lose their employment. Entitlement to benefits provided under this legislation is subject to the condition that the person concerned has resided in France for at least three months immediately preceding the lodging of the claim.

V. Application of the legislation of Germany

1. a. In so far as compensation is not already provided under German legislation concerning compulsory accident insurance, the German institutions compensate, by virtue of the provisions of this Convention, so long as the worker who has sustained an occupational injury or contracted an occupational disease or his survivors reside in the territory of a Contracting Party, for accidents which happened or for occupational diseases which were contracted in Alsace-Lorraine before 1 January 1919, if this liability has not been assumed by French institutions in accordance with the decision of the Council of the League of Nations dated 21 June 1921 (Reichsgesetzblatt p. 1289).

b. The provisions of Article 11 of this Convention do not affect the provisions of German legislation by virtue of which accidents which happened or occupational diseases which were contracted outside the territory of Germany, as well as periods completed outside this territory, do not give rise or give rise only under certain conditions to payment of benefits when the beneficiaries reside outside the territory of Germany.

2. a. In order to determine whether the periods treated under German legislation as periods of interruption (Ausfallzeiten) or supplementary periods (Zurechnungszeiten) shall be taken into account as such periods, compulsory contributions paid by virtue of the legislation of another Contracting Party and compulsory insurance under the pensions insurance of another Contracting Party are deemed to be equivalent to compulsory contributions paid by virtue of German legislation and to compulsory insurance under

German pensions insurance. In calculating the number of calendar months of compulsory insurance before the contingency arose, the concurrent periods, which are deemed to be equivalent by virtue of the legislation of another Contracting Party, are not taken into consideration, nor those periods during which the person concerned has drawn a pension.

b. The preceding sub-paragraph is not applicable to the fixed period of interruption (pauschale Ausfallzeit).

c. The taking into account of a supplementary period (Zurechnungszeit) by virtue of German legislation concerning pensions insurance for miners is subject to the condition that the last contribution paid by virtue of German legislation has been paid to the pensions insurance for miners.

d. For the taking into account of German compensation periods (Ersatzzeiten), only German legislation is applicable.

3. *a. Where a pension on account of an occupational invalidity (Berufsunfähigkeit) or general invalidity (Erwerbsunfähigkeit) or old age, due by virtue of German legislation, and a pension due by virtue of the legislation of another Contracting party in respect of an occupational injury or disease overlap, there will be taken into consideration as annual remuneration the remuneration which by virtue of German legislation should be taken into consideration at the time of the accident for a worker in a comparable situation having sustained an occupational injury; for this purpose, the provisions in force at the place of residence of the person concerned in the territory of Germany, or if he resides outside this territory, the provisions in force at the place where the competent institution of German pensions insurance is situated, are to be applied. The remuneration of the worker concerned shall be determined or recalculated according to the provisions of German legislation.*

b. The total of the accident insurance pension and the theoretical amount within the meaning of Article 29, paragraph 2, of this Convention, but excluding supplementary benefits, children's supplements and increments of complementary insurance (Höherversicherung), is compared with the maximum amount taken into consideration in application of the preceding sub-paragraph. The sum whose total exceeds the maximum amount in question constitutes the notional amount of the reduction. This amount is divided up in proportion to the duration of insurance in accordance with the provisions of Article 29, paragraph 4, of this Convention; the part corresponding to the duration of German insurance shall be deducted from the German portion.

4. *With regard to the suppression of compensatory benefits under the miners' scheme, mining undertakings in the territory of another Contracting Party are regarded as equivalent to German mining undertakings.*

5. *German pensions insurance institutions [do not] apply Article 29, paragraph 5, of this Convention when:*

a. legislation in force before 1 January 1957 concerning the calculation of the pension is applicable;

b. a supplementary period (Zurechnungszeit) is to be taken into consideration; or

c. a children's supplement [or the amount by which an orphan's pension is increased] is to be taken into consideration.

6. *The provisions of Chapter 2 of Title III of this Convention are not applicable to the pensions insurance in the iron and steel industry (Saar) nor to the pension scheme for elderly farmers.*

7. *Article 57 does not apply to the provisions of the Federal Children's Allowances Act, which provide under certain conditions an entitlement to children's allowances for children not residing in the territory where the Federal Children's Allowances Act applies, if the entitled person has been legally or ordinarily residing in the territory where the Federal Children's Allowances Act applies, or in special cases in the territory of the German Reich as of 31 December 1937 for a total of at least 15 years or by virtue of the Federal Expellees Act is legally entitled to claims and benefits.*

VI. Application of the legislation of Luxembourg

1. **Notwithstanding the provisions of Article 74, paragraph 2, of this Convention, periods of insurance and equivalent periods completed before 1 January 1946 under Luxembourg legislation on pensions insurance (invalidity, old age and death) are taken into consideration for the application of that legislation only in so far as the rights in the course of acquisition have been maintained at the time of the entry into force of this Convention or recovered subsequently in conformity solely with that legislation or with bilateral social security conventions in force or to be concluded. In the event of several of such conventions applying, periods of insurance and equivalent periods are taken into consideration as from the earliest date.**

2. **For the purposes of entitlement to the basic part of Luxembourg pensions, periods of insurance completed under Luxembourg legislation by workers not resident on Luxembourg territory are considered as periods of residence.**

3. **Supplements provided, where appropriate, to increase minimum pensions, as well as supplements for children are paid in the same proportion as the basic part for which the State and the municipalities are responsible.**

VII. Application of the legislation of the Netherlands

A. Application of Netherlands legislation on general old-age insurance

1. **For the application of Article 29 of this Convention, periods prior to 1 January 1957 during which the person concerned – who does not fulfil the conditions permitting him to have such periods treated as insurance periods – was resident in the Netherlands territory after the age of fifteen, or during which whilst being resident in the territory of another Contracting Party, he was gainfully employed in the Netherlands by an employer established in that country, are likewise considered as periods of insurance completed under Netherlands legislation on general old-age insurance. If that activity was carried out on board a ship flying the Netherlands flag it is treated as if it had been exercised in the Netherlands.**

2. **Periods are not to be taken into account by virtue of the preceding paragraph when they coincide with periods taken into consideration for the calculation of old-age pensions due under the legislation of another Contracting Party.**

3. **Where a married woman's husband is entitled to a pension under Netherlands legislation on general old-age insurance, periods prior to the date where the woman concerned reached the age of sixty-five and during which, being married, she resided in the course of that marriage in the territory of one or more Contracting Parties, are likewise taken into consideration for the purposes of Article 29 of the Convention in so far as these periods coincide with the periods of insurance completed by her husband under that legislation or with the periods to be taken into consideration by virtue of paragraph 1 above.**

4. Periods are not to be taken into consideration in the case of a married woman by virtue of the preceding paragraph when they coincide with periods taken into consideration for the calculation of the old-age pension due to her under the legislation of another Contracting Party or with periods during which she received an old-age pension under such legislation.

5. Where a woman has been married and her husband has been subject to Netherlands legislation on old-age insurance or is deemed to have completed periods of insurance within the meaning of paragraph 1 above, the provisions of the two preceding paragraphs are applicable, *mutatis mutandis*.

6. Periods prior to 1 January 1957 are only taken into consideration for the calculation of the old-age pension if the person concerned has resided throughout six years in the territory of one or more Contracting Parties after the age of fifty-nine and if he resides in the territory of one of those Parties.

B. Application of the Surviving Dependants Act

1. For the application of the provisions of Article 29 of this Convention, periods prior to 1 October 1959 during which the deceased person resided in the territory of the Netherlands after the age of fifteen or during which, whilst being resident in the territory of another Contracting Party, he was gainfully employed in the Netherlands by an employer established in that country, are likewise considered as periods of insurance completed under the Surviving Dependants Act.

2. Periods are not to be taken into consideration by virtue of the preceding paragraph when they coincide with periods of insurance completed under the legislation of another Contracting Party on survivors' benefits.

C. Application of Netherlands legislation on insurance against incapacity for work

1. For the application of the provisions of Article 29 of the Convention, Netherlands institutions will observe the following provisions:

a. if the person concerned was, at the time at which he became incapable of work with ensuing invalidity, a wage-earner or equivalent, the competent institution will fix cash benefits in accordance with the provisions of the Act of 18 February 1966 on insurance against incapacity for work (WAO), taking into account:

– the periods of insurance completed under the Act of 18 February 1966 abovementioned (WAO),

– the periods of insurance completed after the age of 15 years under the Act of 11 December 1975 concerning incapacity for work (AAW) or the Invalidity Insurance (Self-employed Persons) Act of 24 April 1997 (WAZ), in as far as they do not coincide with the periods of insurance completed by the person concerned under the Act of 18 February 1966 above-mentioned (WAO), and

– the periods of employment and equivalent periods completed in the Netherlands before 1 July 1967;

b. if the person concerned was not, at the time he became incapable of work with ensuing invalidity, a wage-earner or equivalent, the competent institution will fix cash benefits in accordance with the provisions of the Invalidity Insurance (Self-employed Persons) Act of 24 April 1997 (WAZ) taking into account:

– the periods of insurance completed after the age of 15 years under the Act of 11 December 1975 above-mentioned (AAW) or the Act of 24 April 1997 above-mentioned (WAZ),

– the periods of insurance completed under the Act of 18 February 1966 on insurance against incapacity for work (WAO), in as far as these do not coincide with the periods of insurance completed under the Act of 11 December 1975 above-mentioned (AAW) or the Act of 24 April 1997 above-mentioned (WAZ), and

– periods of employment and equivalent periods completed in the Netherlands before 1 July 1967.

2. The provisions of Article 35, paragraph 1, sub-paragraphs a and d, of this Convention are not applied by Netherlands institutions in regard to benefits calculated on the basis of an invalidity or less than 45 %, if the aggravation of the pre-existing invalidity is obviously due to a cause other than that which has brought about the invalidity in respect of which the benefits are drawn.

D. Application of Netherlands legislation on optional continued insurance

The principle of equality of treatment set forth in Article 8 of this Convention does not apply to optional old-age and survivors' insurance so far as the payment of contributions at reduced rates is concerned.

E. Application of certain transitional provisions

When assessing the right to benefits under the General Old-Age Pension Act, the Surviving Dependants Act and the General Disablement Benefits Act under the transitional provisions of those Acts, Article 28, paragraph 2 of the Convention does not apply.

F. Health care insurance

a. As regards entitlement to benefits in kind under Netherlands legislation, persons entitled to benefits in kind for the purpose of the implementation of Chapters 1 and 3 of Title III of this Convention shall mean:

(i) persons who, under Article 2 of the *Zorgverzekeringswet* (Health Care Insurance Act), are obliged to take out insurance with a health care insurer, and

(ii) insofar as they are not already included under point (i), persons who are resident on the territory of another Contracting Party and who, under this Convention, are entitled to health care in their State of residence, the costs being borne by the Netherlands.

b. The persons referred to in point a(i) must, in accordance with the provisions of the *Zorgverzekeringswet* (Health Care Insurance Act), take out insurance with a health care insurer, and the persons referred to in point a(ii) must register with the College voor zorgverzekeringen (Health Care Insurance Board).

c. For the purpose of determining entitlement to benefits pursuant to Chapters 1 and 3 of Title III of this Convention, "members of the family" means: a spouse, registered partner or child under the age of 18.

d. The provisions of the *Zorgverzekeringswet* (Health Care Insurance Act) and the *Algemene Wet Bijzondere Ziektekosten* (Exceptional Medical Expenses Act) concerning liability for the payment of contributions shall apply to the persons referred to under point a. and the members of their families. In respect of family members, the contributions shall be levied on the person from whom the right to health care is derived.

e. The provisions of the *Zorgverzekeringswet* (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the *College voor zorgverzekeringen* (Health Care Insurance Board) in respect of the persons referred to in a(ii).

f. Persons entitled to benefits in kind by virtue of the legislation of a Contracting Party other than the Netherlands who reside in the Netherlands or stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of residence or the place of stay, taking into account Article 11 (1), (2) and (3) and Article 19 (1) of the *Zorgverzekeringswet* (Health Care Insurance Act), as well as to benefits in kind provided by the *Algemene Wet Bijzondere Ziektekosten* (Exceptional Medical Expenses Act).

g. For the purposes of Article 24 of this Convention, the following pensions shall be treated as pensions payable under the legal provisions mentioned in subparagraphs (b) (invalidity) and (c) (old age) of Article 2, paragraph 1, of this Convention :

- pensions awarded under the Law of 6 January 1966 on pensions for civil servants and their survivors (*Algemene burgerlijke pensioenwet*) (Netherlands Civil Service Pensions Act);
- pensions awarded under the Law of 6 october 1966 on pensions for military personnel and their survivors (*Algemene militaire pensioenwet*) (Military Pensions Act);
- disablement benefits awarded under the Law of 7 June 1972 on measures provided on behalf of servicemen and persons regarded as such against the financial consequences of disablement (*Wet arbeidsongeschiktheidsvoorziening militairen*);
- pensions awarded under the Law of 15 February 1967 on pensions for employees of the Netherlands Railway Company (*NV Nederlandse Spoorwegen*) and their survivors (*Spoorwegpensioenwet*), (Railway Pensions Act);
- pensions awarded under the Reglement *Dienstvoorwaarden Nederlandse Spoorwegen* (Regulation governing conditions of employment of the Netherlands Railway Company);
- benefits awarded to retired persons before reaching the pensionable age of 65 years under a pension scheme designed to provide income for former employed persons in their old age, or benefits provided in the event of premature exit from the labour market under a scheme set up by a State or by an industrial agreement for persons aged 55 or over.

h. Persons residing in the Netherlands, who are entitled to benefits in kind at the expense of another Contracting Party under Chapters 1 and 3 of Title III of this Convention, are not insured under the Exceptional Medical Expenses Act.

- i. For the purposes of Chapters 1 and 3 of Title III of this Convention, the no-claim refund provided for in the Netherlands scheme in the event of limited use of health care facilities, shall be deemed to be a sickness benefit in cash.**

VIII. Application of the legislation of Norway

The application of the provisions of the second sub-paragraph of paragraph 4 of Article 1 of the National Insurance Act of 17 June 1966 cannot be extended to non-nationals.

The application of Norwegian legislation cannot be extended to non-nationals in Spitzbergen unless they are employed by a Norwegian employer.

Compensation supplement to benefits from the National Insurance granted in accordance with the Act of 19 December 1969 is granted only to persons domiciled in Norway.

IX. Application of the legislation of Spain

1. All employed or self-employed persons no longer insured under Spanish legislation are assumed to be insured, at the time of the event resulting in entitlement to benefit, for the purposes of the application of the provisions of Chapter 2 of Title III of the Convention, if they are insured under the legislation of another Contracting Party at the time of the aforementioned event or, alternatively, if a benefit is payable under the legislation of another Contracting Party as a result of the said event.

2. a. For the purpose of determining the amount of the pensions referred to in Chapter 2 of Title III of the Convention, the theoretical Spanish benefit is calculated on the basis of the insured person's actual contributions in the years preceding the payment of the last contribution to the Spanish social security system.

b. The amount of the pension is increased in accordance with the improvements and adjustments made for each subsequent year until the year preceding the event resulting in entitlement to benefit, for pensions of the same type.

3. The provisions of Royal Decree No. 2805 of 7 December 1979 concerning persons having the status of civil servant or employee of an international or intergovernmental organisation are extended to the nationals of any Contracting Party as well as refugees and stateless persons:

a. when they have their residence in Spanish territory; or

b. when they have their residence in the territory of another Contracting Party provided they have been, at any time, affiliated in a compulsory manner to the Spanish social security system; or

c. when they have their residence in the territory of a State other than a Contracting Party if they have contributed to the Spanish social security system for a minimum period of one thousand and eighty days, and if they are not insured in a compulsory or voluntary manner under the legislation of a Contracting Party.

X. Application of the legislation of Sweden

With regard to unemployment benefits, the Government of Sweden undertakes to encourage the approved Unemployment Funds to apply the provisions of this Convention in so far as they are in force in respect of Sweden.

XI. Application of the legislation of Switzerland

1. The principle of equality of treatment set forth in Article 8 of this Convention does not apply to:

a. optional old-age and survivors' insurance and optional invalidity insurance for Swiss nationals abroad;

b. old-age and survivors' insurance and invalidity insurance of Swiss nationals working abroad for an employer in Switzerland;

c. relief benefits paid to Swiss invalids residing abroad;

d. special pensions under old-age and survivors' insurance paid to Swiss nationals born before 1 July 1883 or to their survivors.

2. Special invalidity insurance pensions or special old-age pensions payable in lieu thereof are awarded to nationals of the Contracting Parties subject to the conditions that they have resided in Switzerland throughout five years immediately preceding the lodging of the claim. A reservation is made on the provisions of Article 39, paragraphs 2 and 3, of the Federal Act on invalidity insurance.

Special old-age and survivors' insurance pensions are awarded to nationals of the Contracting Parties subject to the condition that they have resided in Switzerland throughout ten years immediately preceding the lodging of the claim in the case of old-age pensions, or subject to the condition that the deceased has resided in Switzerland throughout five years immediately preceding the lodging of the claim in the case of survivors' pensions or old-age pensions payable in lieu thereof.

The period of residence in question is deemed to be uninterrupted, when absence from Swiss territory does not exceed three months in the course of any calendar year. Periods of residence in Switzerland during which the person concerned has been exempt from Swiss invalidity, old-age and survivors' insurance are not taken into account for the required duration of residence.

3. Where nationals of the Contracting Parties have acquired a right to benefits under Swiss invalidity, old-age and survivors' insurance, the provisions of Article 29, paragraph 5, of this Convention will be applied for the calculation of the amount of the pensions due under Swiss insurance.

4. With regard to entitlement to ordinary invalidity pensions, nationals of the Contracting Parties are deemed to be insured within the meaning of Swiss legislation if, at the time of the commencement of invalidity, they are covered by pensions insurance of any Contracting Party or if they are entitled to invalidity benefits under the legislation of any Contracting Party.

5. a. Nationals of the Contracting Parties may request rehabilitation under the federal legislation on invalidity insurance as long as they keep their domicile in Switzerland, provided they have paid contributions to Swiss insurance for at least a whole year immediately preceding the time when they shall benefit from such rehabilitation.

b. Wives and widows who do not follow a gainful activity, as well as minors, children of nationals of the Contracting Parties, may request rehabilitation under the federal legislation on invalidity insurance as long as they keep their domicile in Switzerland, provided they have resided there without interruption for at least one year immediately preceding the time when they shall benefit by such rehabilitation. However, periods of temporary residence outside the Swiss territory not exceeding two months during a calendar year do not interrupt residence in Switzerland.

c. Minors, children of nationals of the Contracting Parties, may request rehabilitation under the federal legislation on invalidity insurance if they have their domicile in Switzerland and have been invalids since birth there or if they have resided in Switzerland without interruption since their birth.