

No. 32552

**GERMANY
and
CHILE**

Convention concerning pension insurance (with final protocol). Signed at Bonn on 5 March 1993

Authentic texts: German and Spanish.

Registered by Germany on 8 February 1996.

**ALLEMAGNE
et
CHILI**

**Accord relatif aux pensions (avec protocole final). Signé à
Bonn le 5 mars 1993**

Textes authentiques : allemand et espagnol.

Enregistré par l'Allemagne le 8 février 1996.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF CHILE CONCERNING PENSION INSURANCE

The Federal Republic of Germany and the Republic of Chile,
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 within which the Basic Law (*Grundgesetz*) of the Federal Republic of Germany is in force; in the case of the Republic of Chile, the area within which the Political Constitution of the Republic of Chile is in force.

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 Chile, a Chilean within the meaning of the Political Constitution of the Republic of Chile.

3. “Legislation” means the laws, regulations and statutory instruments that relate to the social security schemes and benefits referred to in article 2, paragraph 1, and that are in force at the time when this Convention is signed or enters into force thereafter.

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 Chile, the Minister for Labour and Social Welfare.

5. “Insurance authority” means the institution or authority responsible for application of the legislation referred to in article 2, paragraph 1, concerning the schemes and benefits mentioned therein.

6. “Competent insurance authority” means the insurance authority responsible for implementation of the legislation in a given case.

7. “Employment” or “occupation” means an employment or occupation within the meaning of the legislation applicable under this Convention.

8. “Periods of coverage” means contribution periods designated or recognized as periods of coverage in the legislation under which they were completed, and similar periods, provided that they are recognized in the aforesaid legislation as equivalent to periods of coverage.

¹ Came into force on 1 January 1994, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place in Santiago on 2 November 1993, in accordance with article 27 (2).

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

Article 2

1. Except as otherwise provided herein, this Convention shall apply:

(a) In the case of the Federal Republic of Germany, to the legislation concerning:

- Statutory pension insurance;
- Supplemental pension insurance for miners and steelworkers; and
- The special pension scheme for farm workers.

(b) In the case of the Republic of Chile, to the legislation concerning:

- The new old-age, disability and survivors’ pension scheme, based on individual contributions; and
- The old-age, disability and survivors’ pension schemes administered by the Welfare Standards Institute (*Instituto de Normalización Previsional*).

2. If, in addition to the conditions for application of this Convention, the conditions for application of another convention or of a supranational regulation are met under the legislation of a Contracting State, that Contracting State’s insurance authority shall not take the other convention or the supranational regulation into account in granting the benefits provided for under the present Convention.

3. Paragraph 2 shall not apply if the Contracting States’ social security legislation arising out of, or intended to implement, inter-State agreements or supranational law contains provisions regulating insurance burdens.

Article 3

Except as otherwise provided herein, this Convention shall apply to:

(a) Nationals of either Contracting State;

(b) Refugees as defined by article 1 of the Convention relating to the Status of Refugees of 28 July 1951¹ and by the Protocol thereto of 31 January 1967;²

(c) Stateless persons as defined by article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954;³

(d) Other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person within the meaning of this article;

(e) Nationals of a State other than a Contracting State who do not belong to any of the categories of persons mentioned in article 3, paragraph *d*, above.

Article 4

1. Except as otherwise provided in this Convention, persons mentioned in article 3, paragraphs *a* to *d*, above who ordinarily reside in the territory of a Contracting State shall in the application of the legislation of a Contracting State be treated equally with that State’s nationals.

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

2. Benefits under the legislation of one Contracting State shall be payable to nationals of the other Contracting State who ordinarily reside outside the territory of the Contracting States on the same conditions as to nationals of the first Contracting State who ordinarily reside outside the territory of the Contracting States.

Article 5

Except as otherwise provided in this Convention, legislation of one Contracting State under which entitlement to, or payment of, monetary benefits is contingent upon residence in the territory of that State shall not apply to persons in the categories mentioned in article 3, paragraphs *a* to *d*, above who ordinarily reside in the territory of the other Contracting State.

Article 6

Except as otherwise provided in articles 7 to 11 of this Convention, the obligation of employed persons to participate in an insurance scheme shall be determined by the legislation of the Contracting State in whose territory they are employed; this shall apply even if the employer is located in the territory of the other Contracting State.

Article 7

A person employed in one Contracting State who is sent by his employer to work for that employer in the territory of the other Contracting State shall be subject as regards that work to the first State's legislation alone for the first 36 calendar months of activity in the second State's territory, as if he were employed in the first State. Beyond that period, the first State's legislation concerning compulsory insurance shall continue to apply, provided that the competent public authorities of, or the entities designated by the Contracting States, so agree upon request from the worker and his employer.

Article 8

1. Persons employed on an ocean-going vessel flying the flag of a Contracting State shall be subject to the legislation of that State.

2. If an employed person ordinarily resident in the territory of one Contracting State is temporarily employed on board an ocean-going vessel flying the flag of the other Contracting State by an employer that has its principal place of business in the territory of the first Contracting State but is not the owner of the vessel, the first Contracting State's legislation concerning compulsory insurance shall apply as if the person were employed in the territory of that State.

Article 9

Articles 6 to 8 shall also apply to persons who, while they are not employed persons, are covered by the legislation mentioned in article 2, paragraph 1.

Article 10

1. If a national of a Contracting State is employed by that State or by a member or an employee of a mission of that State in the territory of the other Contracting State, he shall for the duration of his employment be subject as regards compulsory insurance to the first Contracting State's legislation as if he were employed in the territory of that State.

2. An employed person covered by paragraph 1 of this article who ordinarily resided in the country of his employment prior to being employed there may, within six months of the beginning of his employment, elect to be subject as regards compulsory insurance to the legislation of that country. The employer must be notified of this choice. The chosen legislation shall apply as from the date of notification.

3. Paragraphs 1 and 2 above shall also apply to the employed persons referred to therein if they are employed by a public employer.

4. If the embassy or consulate of one Contracting State employs persons to whom the legislation of the other Contracting State applies, it shall be subject to that legislation in its capacity as employer.

Article 11

At the request of an employed person and his employer, or of persons in the situation described in article 9, the competent public authorities of, or the entities designated by, the Contracting States may, by mutual agreement, waive the provisions of articles 6 to 10, provided that the person in question remains or becomes subject to the legislation of one Contracting State. In that regard, account shall be taken of the type and circumstances of the employment.

PART II. PROVISIONS RELATING TO BENEFITS

Chapter I. BILATERAL PROVISIONS

Article 12

1. For the purpose of establishing eligibility for benefits or the maintenance or recovery of entitlement to benefits, the competent insurance authority of each Contracting State shall add to the periods of coverage that are to be taken into account under the legislation applicable by it the periods of coverage accumulated under the legislation of the other Contracting State. If there are periods of simultaneous coverage, each insurance authority shall take into account only the periods of coverage accumulated under its own legislation. The extent to which periods of coverage are to be taken into account shall be determined by the legislation under which they were accumulated.

2. Except as otherwise provided in this Convention, pension benefits shall be calculated in accordance with the legislation of each Contracting State.

3. In the case of disability benefits, each Contracting State's competent insurance authority shall effect the medical evaluation of the disability in accordance with the legislation that is valid for it.

Chapter II. PENSION INSURANCE UNDER GERMAN LEGISLATION

Article 13

1. Periods of coverage that are to be taken into account in accordance with article 12 shall be assigned to the insurance scheme whose insurance authority is responsible for determining the benefits solely under German legislation. Should the miners' pension insurance scheme be so competent, periods of coverage accumulated in Chile shall be taken into account only if the work in question was carried out in underground mines.